92-388

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

October 1992 Term

No. _____

LEWIS R. ANDERSON,
I.D. BREEDEN, SR.,
PHIL KAUBLE, et al,
-v-
IN THE MATTER OF:
CONTINENTAL STEEL CORPORATION,
FORMERLY KNOWN AS
PENN-DIXIE STEEL CORPORATION,
FORMERLY KNOWN AS
PENN-DIXIE INDUSTRIES,
INCORPORATED, et al,

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Submitted By:

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QUESTION PRESENTED

This appeal addresses a question of exceptional importance as to whether or not Appellants have any standing to invoke that plain meanings be given to the Rules concerning their claims rendered to money in a U.S. bankruptcy court, and whether or not the Seventh Circuit Court of Appeals has any duty to maintain the integrity of the legal profession in the face of a denial of any duty to account to Appellants for the claims of Appellants rendered to money by the attorneys who negotiated and rendered the Appellants claims to money in a U.S. bankruptcy court.

LIST OF PARTIES

Pursuant to Rule 21.1(b), the parties who have appeared in the appeal case no. 91-3387 are listed below.

APPELLANTS:

Lewis R. Anderson,
I.D. Breeden, Sr.,
Phillip L. Kauble and
Wade E. Kauble
by counsel Mark Garringer, Esq.

APPELLEES:

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Lewis R. Anderson, I.D. Breeden, Sr. Phillip L. Kauble, and Wade E. Kauble (hereinafter, "Anderson") pray that a Writ of Certiorari issue to review the judgment of the U.S. Seventh Circuit Court of Appeals entered in the matter of Lewis R. Anderson, I.D. Breeden, Sr., Phillip L. Kauble and Wade E. Kauble, Petitioners, -v- William P. Wooden, Esq., John D. Nell, Esq., the law firm of Wooden, McLaughlin & Sterner, Paul T. Deignan, Esq., John Wood, Esq., and the law firm of Bamberger & Feibleman, Respondents in the bankruptcy of Continental Steel Corporation, formerly known as Penn-Dixie Steel, formerly known as Penn-Dixie Industries, Inc., in the United

States bankruptcy court for the Southern District of Indiana case no. IP85-5415-V.

OPINIONS BELOW

The Judgment and opinion of the U.S. Seventh Circuit Court of Appeals is unreported and is reproduced in Appendix A and B hereto, infra., at pages 32-34.

The opinion of the district court appealed to the Circuit Court is reproduced at Appendix C hereto, infra., at page 47.

The opinion of the bankruptcy court appealed to the district court is reproduced at Appendix D hereto, infra., at page 55.

JURISDICTION

The Judgment and opinion of the U.S. Seventh Circuit Court of Appeals was entered on June 17, 1992. The jurisdiction of the Supreme Court is

invoked under 28 U.S.C. §1254(1).

RULES INVOLVED

The Rules involved are Rule V(A) of the Rules of Disciplinary Enforcement of the U.S. District Court for the Southern District of Indiana which provide:

> A. When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before the Court shall come to the attention of a judge of this Court, whether by complaint of otherwise, and the applicable procedure is not otherwise mandated by these Rules, the judge shall refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

and Rule 1.15(b) of the Rules of Professional Conduct of the Indiana Supreme Court which provides in pertinent part:

> a lawyer shall promptly deliver to the client or third person any funds or other property that the client or

third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

STATEMENT OF THE CASE

Anderson was employed by Continental Steel Corporation (hereinafter, "Continental") and a member of the United Steelworkers of America Local 1054 (hereinafter, the "Union" and "Local 1054" , 1054", respectively.

On November 25, 1985, Continental filed for voluntary relief in the U.S. bankruptcy court for the Southern District of Indiana under the provisions of Chapter 11 of the U.S. Bankruptcy Code [Title 11, U.S.C.]. The Union intervened on behalf of Local 1054 by counsel Bamberger & Feibleman (hereinafter, "Bamberger") during the Chapter 11 proceedings.

On February 25, 1986, the Continental bankruptcy was converted to a Chapter 7

proceeding. Continental closed the doors to the facility at which Anderson worked and Anderson had no expectation to return to work for Continental. Anderson had sum certain claims for wages and employment related benefits against the bankrupt estate of Continental Steel.

In November, 1986, the Union, by counsel Bamberger, filed an adversary complaint in Adversary Proceeding 86-593 in the Continental bankruptcy to determine the validity and priority of wage claims and statutory liens of members of Local 1054 against the bankrupt estate. No notice of the proceeding was given to Anderson or other claimants.

In April, 1988, the Union and Bamberger executed a Settlement Agreement "on behalf of members of Local 1054" in the bankruptcy of Continental which was approved by the bankruptcy

court in April, 1988. The Union had established a statutory trusteeship over Local 1054 pursuant to 29 U.S.C. §461 et seq., in 1986, and a Terminal Trusteeship Information Report Form was filed by the Union with the U.S. Department of Labor in 1987 which established the termination date of the prior Local 1054 as July 7, 1987.

In September, 1989, the undersigned counsel for Anderson filed an appearance for Anderson's wage claims in the Continental bankruptcy attaching the Powers of Attorney executed by Anderson and 124 others. In October, 1989, the Union, by counsel Bamberger, moved to dismiss Adversary Proceeding 86-593 "with prejudice" which was granted by the bankruptcy court. There was no notice to Anderson of Adversary Proceeding 86-593 at any time, including the extinguishment of his

claims "with prejudice."

Anderson filed an action for accounting against Bamberger in a state court action for information concerning Anderson's claims rendered to money. Bamberger denied any duty to account or provide information to Anderson. Id. Bamberger asserted it had no duty to account or provide information on grounds that Bamberger represented a labor union and a named member of a class pursuant to Rule 23 Fed.R.Civ.P., that there was no direct attorney-client relationship between Anderson and Bamberger, and, thus, there is no duty to account by Bamberger. Anderson moved to remove the state court action to the bankruptcy court on grounds that this was a matter concerning the "administration of the bankrupt estate." 11 U.S.C. §157(a).

The Pension Benefit Guaranty Corpor-

ation commenced a plan termination proceeding of the pension plan of which Anderson was a plan participant, pursuant to 29 U.S.C. §1342. The plan termination proceeding was referred to the bankruptcy court as Adversary Proceeding 86-141. The Union moved to intervene on behalf of Local 1054 as a plan participant. However, this motion was never ruled on. In February, 1988, Anderson's counsel Hopkins & Sutter moved to intervene in the plan termination proceeding. In March, 1988, the Union, by counsel Bamberger, objected to intervention by Anderson's counsel on grounds that the Union was the official bargaining agent for Anderson in March, 1988, and that the Union had Powers of Attorney from the plan participants.

In 1990, Anderson filed a report of attorney misconduct in the bankruptcy

court and moved that the bankruptcy court refer the matter to counsel for the Indiana Supreme Court Disciplinary Commission pursuant to Rule V(A) and Rule X of the Rules of Disciplinary Enforcement of the U.S. district court for the Southern District of Indiana. Rule V(A) supra, at 3; Rule X infra, in Appendix E at 90.

The misconduct report alleged that during the years 1986 and 1987, Bamberger advised all prospective counsel that Anderson attempted to hire that Bamberger "represented" Anderson. It alleged Bamberger concealed the existence of the Adversary Proceeding where Anderson's wage claims were asserted from Anderson. Id. It alleged that in October, 1989, Bamberger's counsel denied any personal knowledge of any adversary proceeding where the interests of Anderson were litigated

while contemporaneously Bamberger was procuring the extinguishment of Anderson's claims "with prejudice" in Adversary Proceeding 86-593. Id. It alleged in Adversary Proceeding 86-141 that Bamberger fraudulently asserted "Powers of Attorney" executed by the pension plan participants, that it did not have.

The misconduct report alleged that Bamberger fraudulently asserted a collective bargaining agency of the Union over representation of Anderson's claims when Bamberger knew that the collective bargaining agency had ceased to exist. Id. It alleged that Bamberger was a party to the fraud of negotiating Anderson's claims to money in bankruptcy court on behalf of Anderson as a "member" of Local 1054 of the Union, when the entity of Local 1054 no longer existed, while depriving Anderson of

any information on grounds that he was no longer a "member" of the Union. Id. The misconduct report at paragraph 18:

> 18. That Bamberger violated, and is now violating, Rule 1.15 of the Rules of Professional Conduct by the rendering of Claimants' claims to money under the guise and shell of the "Union Trust Fund" and the "Union Medical Claims Committee" in the administration of this bankruptcy without accounting for Claimants' property when asked to do so.

The bankruptcy court denied Anderson's motion to appoint counsel contained in the misconduct report on grounds that there was not a "shred of support" to the allegations. Appendix D, infra, at page 88.

The Settlement Agreement approved by the bankruptcy court in March, 1988, established a Union Employee Discretionary Trust to be administered by three trustees appointed by the Union. The bankruptcy trustee reported that as of December 31, 1991, $1,124,000.00 had

been distributed from the bankrupt estate to the Union Employees Discretionary Trust. There is no evidence or accounting in any public record as to where this $1,124,000.00 went.

I. FIRST SUBSTANTIAL DEPARTURE FROM THE LAWS OF THE UNITED STATES

THE CIRCUIT COURT IS REFUSING TO REQUIRE BAMBERGER TO ACCOUNT FOR ANDERSON'S MONEY WHEN IT IS REQUIRED BY LAW TO DO SO

One thing is certain. From day one, Anderson only sought information from Bamberger concerning where his claims rendered to money went. It is undisputed fact of record that Bamberger rendered Anderson's claims to money. Rule 1.15(b) of Rules of Professional Conduct of the Indiana Supreme Court provides in pertinent part:

> "[A] lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall prompt-

ly render a full accounting regarding such property."

Rule 1.15(b) is plain in meaning and embodies the fundamental notions of honesty and integrity held by members of the general public. The Supreme Court says that the Rules must be given their plain meaning. Pavlic & LeFlore v Marvel Group, 493 U.S. 120, 123, 107 L.Ed.2d 438, 110 S.Ct. 456 (1989). Anderson has been adamant throughout, that notwithstanding any direct attorney-client relationship, Bamberger has duties to third-parties pursuant to Rule 1.15(b) of Rule of Professional Conduct and applicable Indiana law. Herman v Frey, 537 N.E.2d 529 (Ind.App. -1989). Walker v Lawson, 526 N.E.2d 968 (Ind.-1988). There is a shred of support to paragraph 18 of the misconduct report alleging a "Union Trust Fund." The bankruptcy trustee

distributed $1,124,000.00 to the Union Employee Discretionary Trust Fund. Where did this $1,124,000.00 go?

One thing is certain. This $1,124,000.00 did not depart from the bankrupt estate of Continental Steel pursuant to the laws of the United States. There are only two procedures outlined in Title 11 of the U.S. Code (the Bankruptcy Code) for receiving money from bankrupt estates. There are applications for compensation by attorneys and other professionals pursuant to 11 U.S.C. §330 and Rule 2016 of the Bankruptcy Rules; and there are filings and allowance of proof of claims or interests pursuant to 11 U.S.C. §§501, 502. In either event, the right, title or interest of the recipient of money from a bankrupt estate is a matter of public record prior to distribution. In other words,

the recipient of money and the right to receive money from this $1,124,000.00 distributed to the Union Employee Discretionary Trust Fund should be a matter of public record as required by law. Id. However, it is not.

Another thing is certain. There is no statutory provision in the laws of the United State for the transfer of $1,124,000.00 of the Continental estate "to be administered by three trustees appointed by the United Steelworkers of America." Title 11 of the U.S. Code requires application for compensation or proofs of claim as preconditions to receiving money from bankrupt estates. Thus, not only are the Rules suspended as to Bamberger, the laws of the United States are suspended as to Bamberger. Id.

The Advisory Committe Notes to Rule 2019 of Bankruptcy Rules of Procedure

make clear that an intervenor, such as the Unions in Chapter 11 proceedings are not entitled to fees or compensation for expenses. However, this only adds to the puzzlemment of where this money went and for what good reason pursuant to laws of the United States.

As to the "Powers of Attorney" asserted by Bamberger in the pension plan termination proceeding, Anderson asserts that Bamberger held no valid Powers of Attorney from the plan participants at any time. Rule 9010(c) of the Bankruptcy Rules of Procedure requires that valid Powers of Attorney be a matter of public record. Thus, if Rule 9010(c) were enforced by the lower courts, it would be easy to ascertain the truth of Anderson's assertion that Bamberger fraudulently asserted Powers of Attorney that it did not have. However, that is another Rule suspended

as to Bamberger.

As to the "official bargaining agency" of the Union to represent Anderson in the pension plan termination proceeding, Anderson has been consistent that the Union could not be the exclusive bargaining agent for plan participants pursuant to the "holding" of the U.S. Supreme Court in Allied Chemical v P.P.G. Co., 404 U.S. 157, 30 L.Ed.2d 341, 92 S.Ct. 383. The "holding" of Allied Chemical:

> [13] In this cause, in addition to holding that pensioners are not "employees" within the meaning of the collective-bargaining obligations of the Act, we hold that they were not and could not be "employees" included in the bargaining unit ...
>
> Although those terms may include persons on temporary or limited absence from work, such as employees on military duty, it would utterly destroy the function of language to read them as embracing those whose work has ceased with no expectation of return.
>
> [404 U.S. at 172, 30 L.Ed.2d at 353]

It has not occurred to the lower courts to inquire with Bamberger as to what authority in the laws of the United States the Union has as "exclusive bargaining agent" for Anderson. That is because there is none. Likewise, it has not occurred to the lower courts to inquire as to how Bamberger could execute a settlement agreement in the bankruptcy court in March, 1988, on behalf of active "members" of Local 1054 when the Union had filed Terminal Trusteeship Reports with the Department of Labor extinguishing this entity nine months prior to the execution of the settlement agreement.

In Pepper v Litton, 308 U.S. 295, 306-307, 60 S.Ct. 283, 84 L.Ed. 281 (1940), when a fiduciary's dealings are challenged, his dealings are subjected to rigorous scrutiny. 308 U.S. 306. A fiduciary cannot violate the rules of

fair play to conceal information required by law to be revealed, and utilize his unique access to information to his own preferment. 308 U.S. 310. The decision of the Circuit Court is repugnant to Pepper v Litton, supra; 11 U.S.C. §§330, 501, and 502; and the plain meanings of the Rules delineated in this First Substantial Departure From the Laws of the United States in conflict with Marvel Group, supra; Rule 1.15 of the Rules of Professional Conduct and Rule V(A) of the Rules of Disciplinary Enforcement of the District Court.

II. SECOND SUBSTANTIAL DEPARTURE FROM THE LAWS OF THE UNITED STATES

THE DECISION RELIES ON DETERMINATIONS OF A LOWER COURT WITHOUT JURISDICTION TO MAKE SUCH DETERMINATIONS

Anderson has consistently argued that the bankruptcy court does not have

jurisdiction to make such determinations as to the merits of the misconduct report and that the Indiana Supreme Court has exclusive jurisdiction over the conduct of attorneys in the state of Indiana. Rule V(A) conforms with the jurisdictional mandates. Nevertheless, the "facts" in decision of the Circuit Court "After determining that there had been no fraudulent behavior, the bankruptcy court declined to refer the Report to counsel for further investigation." Appendix A infra, at page 35.

The bankruptcy court had no jurisdiction to make such determination found in the laws of the United States. Northern Pipeline v Marathon Oil, 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1983) and 11 U.S.C. §157. The bankruptcy court had no jurisdiction to determine that the misconduct report lacked "a shred of support." The words

"inferior court" apply to courts of special and limited authority erected on such principles that their proceedings must show jurisdiction. Re: Cuddy 131 U.S. 280, 9 S.Ct. 703 33 L.Ed. 435. The decision of the Circuit Court blithely relies on determinations by a bankruptcy court without jurisdiction to make such determinations.

III. THIRD SUBSTANTIAL DEPARTURE FROM THE LAWS OF THE UNITED STATES

THE CIRCUIT COURT IS BIFURCATING ANDERSON FROM HIS INTERESTS IN A MANNER UNKNOWN TO THE LAWS OF THE UNITED STATES TO FIND THAT ANDERSON HAS NO STANDING TO ENFORCE THE PLAIN MEANINGS OF THE RULES

Rule V(A) of the U.S. District Court for the Southern District of Indiana makes it clear that the court shall refer to counsel for the Disciplinary Commission upon allegations, if substantiated, would warrant discipline.

Rule V(A), supra, at page 3; Rule X at infra, at page 90. There is no dispute that the lower courts failed to give Rule V(A) its plain meaning, contrary to Pavlic & LeFlore v Marvel Comic Group, supra.

However, the Circuit Court avoided giving Rule V(A) its plain meaning while avoiding the issues raised in the first two Substantial Departures from the Laws of the United States delineated in this petition, by finding that Anderson lacked standing to require that Rule V(A) be given its plain meaning. Appendix B infra., at page 39. The Circuit Court determined that Anderson was a "mere informer" with no standing to do other than inform. Id.

The "gist of the question of standing" is whether the party seeking relief has "alleged such a personal

stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." Baker v Carr, 369 US 286, 204, 7 L.Ed.2d 663, 82 S.Ct. 691 (1962). In other words, when standing is placed in issue in a case, the question is whether the person *[392 US 100] whose standing is *challenged is a proper party to request an adjudication of a particular issue. Flast v Cohen, 392 U.S. 83, 99-100, 20 L.Ed2d 947, 961, 88 S.Ct. 1942 (1962). Of course, Anderson is not requesting the "adjudication" of a particular issue from the bankruptcy court. To the contrary. However, if there is a "particular issue" that Anderson has exhausted all remedies to get a determination on, it is the issue

of Bamberger's duty to account for Anderson's claims rendered to money in the settlement of the Continental bankruptcy. Bamberger says that it has no duty to provide information to Anderson, when this is plain contrary to law. Rule 1.15(b) of Disciplinary Rules of the Indiana Supreme Court, reproduced at pages 3-4, supra; Herman v Frey, supra; Walker v Lawson, supra; Pepper v Litton, supra.

Thus, the issue of standing must focus in on the issue of whether Anderson is the "proper party" to raise the issue of where his claims rendered to money went, and whether or not Bamberger has a duty to account for his claims rendered to money. Flast v Cohen, supra.

Of course, we do not see a determination by the lower courts that Bamberger has no duty to account to

members of the general public for their claims rendered to money. Appendix, passim. Instead, the usual puff and smoke to reach the same result. Id. Bamberger renders claims of members of the general public to money without the knowledge or consent of the claim holder, and Bamberger has no duty to account to the claim holder. Anderson is not interested in the claims of others, but only his claims rendered to money.

It is clear that Anderson properly invoked the judicial process by presenting a "controversy" in the constitutional sense before the bankruptcy court, and that Anderson was the proper party to raise the issue before the bankruptcy court. S.v D., 410 U.S. 614, 35 L.Ed 2d 536, 93 S.Ct. 1146. The decision of the Circuit Court is contrary to S.v D..

Likewise, there is no analysis of "palpable economic injury" by the lower courts. A palpable economic injury is sufficient to lay the basis for standing, with or without a specific statutory provision for judicial review. Sierra Club v Morton, 405 US 727, 92 S.Ct. 1361 31 L.Ed 2d 636. It would be a bizarre experience to get hit by a truck and to get out of the hospital, only to find that Bamberger had rendered your claims to money and had no duty to account to you. Such is the case here.

At oral argument, Anderson's counsel described the phenomenon of a labor organization, complete with active members, executing a settlement agreement in the bankruptcy court, nine months after another labor organization with the same name filed a final Terminal Trusteeship Report with the

Department of Labor, and that phenomenon of the "Union Employees Discretionary Trust", collectively with other phenomena, as sightings of "Unidentified Flying Labor Organizations." There are no reports to the Department of Labor pursuant to the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §§410 et seq.,. However, there is a substantial amount of financial activity conducted by these transcendental labor organizations if the $1,124,000.00 distributed to the Union Employees Discretionary Trust is any indication. There are no duties to the "membership" of these labor organizations pursuant to 29 U.S.C. §501. There are no duties to account to anybody but themselves.

The Fifth Amendment of the United State Constitution provides that persons shall not be deprived of

property without due process of law. Goldberg v Kelly, 397 U.S. 254, 35 L.Ed 287, 90 S.Ct. 1011. In Goldberg the Supreme Court outlines "the right to be heard" in any litigation or government activity by any party whose interests are being determined. Id. It is an instinctive right with "ancient roots." Id. Such is the case here. The decision of the Circuit Court that Anderson has no standing to be heard and invoke the judicial process concerning Anderson's claims rendered to money is a violation of Anderson's rights guaranteed by the due process clause of the Fifth Amendment. Id.

As Abraham Lincoln said about slavery, "if this is not wrong, then nothing is wrong." So it is here. Congress need not bother to enact laws, nor need the Supreme Court render decisions. That is because the lower

courts need not follow the plain meaning of the Rules and the laws of the United States. The lower courts have no duty to maintain the integrity of the legal profession practicing before them on such a simple issue as the duty of lawyers to account for the claims they render to money to the true claim holders.

CONCLUSION

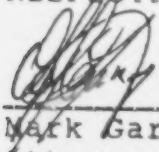
The U.S. Seventh Circuit Court of Appeals dramatically departed from the laws of the United States when it found that Anderson had no standing to invoke the judicial process concerning his claims rendered to money. The Circuit Court sanctioned similar departures of the laws of the United States by the lower courts which go to the heart of common notions of integrity and honesty of the legal profession practicing in our bankruptcy courts. The big winners

are the recipients of largesse from the Union Employee Discretionary Trust who have no right, title or interest to the property under any known laws of the United States. The big loser is Anderson who has no standing to ascertain what happened to his claims rendered to money, and the integrity of the judicial process.

PRECISE RELIEF REQUESTED

For the foregoing reasons, Anderson prays that writ of certiorari issue to review the judgment of the U.S. Seventh Circuit Court of Appeals.

RESPECTFULLY SUBMITTED BY:



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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JUDGMENT - WITH ORAL ARGUMENT

JUNE 17, 1992

Before

Hon. Joel M. Flaum, Circuit Judge

Hon. Daniel A. Manion, Circuit Judge

Hon. Milton I. Shadur, District Judge*

No. 91-3387

IN THE MATTER OF: CONTINENTAL STEEL CORPORATION, formerly known as PENN-DIXIE STEEL CORPORATION, formerly known as PENN-DIXIE INDUSTRIES, INCORPORATED,	)	Appeal from the United States District Court for the S.D. of Indiana, Indianapolis, Division
Debtor,	)	91 C 362
APPEAL OF: LEWIS R. ANDERSON, I.D. BREEDEN, SR., PHIL KAUBLE, et al.	)	Sarah Evans Barker, Judge

This cause was heard on the record from the above mentioned District Court, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this court that the judgment of the District Court is DISMISSED, with costs, in accordance with the decision of this court entered this date.

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* The Honorable Milton I. Shadur, District Judge for the Northern District of Illinois, is sitting by designation.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Argued April 7, 1992
June 17, 1992

Before

Hon. Joel M. Flaum, Circuit Judge

Hon. Daniel A. Manion, Circuit Judge

Hon. Milton I. Shadur, District Judge*

IN THE MATTER OF: CONTINENTAL STEEL CORPORATION formerly known as Penn Dixie Steel Corporation, formerly known as Penn Dixie Industries, Incorporated,	)	Appeal from the United States District Court for the S.D. of Indiana, Indianapolis Division
Debtor,	)	91 C 362
No. 91-3387	)	Sara Evans Barker, Judge
APPEAL OF: LEWIS R. ANDERSON, I.D. BREEDEN, Sr., PHIL KAUBLE, et al.	)	

ORDER

Appellants filed a report of attorney misconduct in the bankruptcy court and

requested that the bankruptcy court take disciplinary action against the appellees. The Bankruptcy Court took no disciplinary action after concluding that there was not a "shred of support" for the report of misconduct. The appellants appealed the denial to the district court. The district court affirmed the bankruptcy court. We hold that the appellants have no standing and dismiss the appeal.

I. Facts

The appellants are claimants to a pension plan that has been the subject of dispute in adversary proceedings before the bankruptcy court. On March 10, 1988, the bankruptcy court approved a settlement agreement between the Union, the Pension Benefit Guaranty Company and the trustee in bankruptcy

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* Hon. Milton I. Shadur, District Judge for the Northern District of Illinois, is sitting by designation.

regarding the termination date of the pension plan. Dissatisfied with the administration of benefits from the plan pursuant to the terms worked out by the Union, the appellants filed with the bankruptcy court a "Verified Report to the Court of Egregious Attorney Misconduct by William P. Wooden, Esq., John D. Nell, Esq., Wooden McLaughlin & Sterner and Paul T Deignan, Esq., John Wood and the Law Firm of Bamberger & Feibleman and Motion to Appoint Counsel" ("Report"). The report alleged misconduct both on the part of Bamberger & Feibleman and several of its individual attorneys who represented the Union in the bankruptcy proceedings and also on the part of Wooden, McLaughlin & Sterner and several individual attorneys who defended Bamberger & Feibleman in an action for accounting in state court.

The allegations against the attorneys break down into three groups: (1) Bamberger and Feibleman filed claims in the adversary proceedings before the bankruptcy court on behalf of the appellants without the appellants' knowledge or consent, (2) Bamberger and Feibleman participated in settlement of the former employees' claims to $3,500,000.00 and participated in the liquidation of Pension Plan assets of $40,000,000.00, and the sums are not accounted for, and (3) Wooden, McLaughlin & Sterner's answer in state court denying the attorney-client relationship between Bamberger & Feibleman perpetrated a fraud on the state court. The appellants requested that the matter be referred to the Indiana Disciplinary Commission of the Indiana Supreme Court for investigation

pursuant to Rule V(A) of the Rule of Disciplinary Enforcement for the Southern District of Indiana ("Rules of Disciplinary Enforcement").

After determining that there had been no fraudulent behavior, the bankruptcy court declined to refer the Report to counsel for further investigation. Mem. Op. Mar. 28, 1991. After accepting review of the bankruptcy court's order under the collateral order doctrine, the district court determined that the bankruptcy court's findings of fact were not clearly erroneous and concluded that the bankruptcy court had not abused its discretion by not referring the matter to counsel for further investigation. Furthermore, the district court found that after the bankruptcy court's decision, the appellants filed a claim of misconduct

on the part of Attorney Deignan with the Indiana Disciplinary Commission and that the Indiana Disciplinary Commission had concluded that Deignan was not guilty of misconduct and dismissed the complaint. Accordingly, the district court determined that the appeal from the bankruptcy court's decision was moot as well as meritless. Mem.Op.Sep.30,1991.

On appeal to this court, the appellants maintain that the bankruptcy court was obliged to refer the matter to counsel pursuant to Rule V(A) of the Rules of Disciplinary Enforcement. We dismiss the appeal because the appellants lack standing.

II. Analysis

The court's power to discipline any attorney after receiving information of misconduct stems from the court's

inherent power to oversee the conduct of its officers and maintain the integrity of the court. See In re Echeles, 430 F.2d 347, 349 (7th Cir. 1970) (disbarment and suspension proceedings are not lawsuits between parties but are in the nature of an inquest or inquiry as to the conduct of the respondent); In re Teitlebaum, 253 F.2d 1, 2 (7th Cir. 1958) (status of person bringing information to the court was that of informer). By bringing their Report to the bankruptcy court, the appellants did not initiate a lawsuit or become parties to a disciplinary proceeding but simply served as informants to the court. Beyond acting as informer, an individual may not exercise control over disciplinary proceedings. Mattice v. Meyer, 353 F.2d 316, 319 (8th Cir.

(1965). Even if the reporting person is a party or counsel to a party in the case where the ethical violation has occurred, the role of a party or counsel ends after a report has been submitted to the court. "It remains for the court to vindicate its authority." Ramos Colon v. Unites States Attorney, 576 F.2d 1, 9 (1st Cir. 1978); accord Mattice, 353 F.2d at 319. Accordingly, in In re Teitelbaum, the court concluded that the United States Attorney who reported misconduct of another attorney to the court had no standing to appeal the lower court's decision not to disbar the errant attorney. In re Teitelbaum, 253 F.2d at 2. In re Echeles, this court concluded that the United States Attorney who reported misconduct had standing to appeal only because the district court

gave permission for the appeal. In re Echeles, 430 F.2d at 350.

The appellants in this case, however, see their position as distinguishable from that of the attorneys denied standing in the cases cited above. They request "that the Entry of the District Court be reversed and that instructions to the District court be made to instruct the Bankruptcy Court to appoint counsel of the Disciplinary Commission of the Indiana Supreme Court upon Claimants' allegations, which, if substantiated, would warrant discipline pursuant to Rule 5(A) of the Rules of Disciplinary Enforcement of the District Court." Appellants contend that the bankruptcy court did not comply with the mandatory language of Rule V(A) of the Disciplinary Enforcement Rules of the Southern District of Indiana which provides:

> When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court shall come to the attention of a judge of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, the judge shall refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.
>
> Rule V(A), Rules of Disciplinary Enforcement, Southern District of Indiana (emphasis added).

The existence of the local rules, however, does not change the principles of standing guided this court in In re Echeles and In re Teitelbaum. The local

rules do not raise the status of the appellants above that of informers. They create no cause of action but simply guide the court in the exercise of its inherent right to oversee the integrity of the court by disciplining the bar. Accordingly, the appellants in this case have no more standing to appeal the district court's disposition of their report than the United States Attorney in In re Teitelbaum. As informers, the appellants stand in no better position to appeal than a citizen who reports to a district attorney criminal activity that the district attorney decides not to prosecute.

Other appellate courts have noted that a district court's inherent power to discipline attorney who practice before it does not absolve the court from its

obligation to follow the rules it created to implement its exercise of its power. Matter of Thalheim, 853 F.2d 383, 388 (5th Cir. 1988); United States v. Stoneberger, 805 F.2d 1391, 1393-94 (9th Cir. 1986); Matter of Abrams, 423 U.S. 1038 1975); cf. Congregation of the Passion v. Touche, Ross & Co., 854 F.2d 219, 223 (7th Cir. 1988) (despite considerable discretion given to district courts in interpreting their local rules, court of appeals will reverse a district court's construction of its own rule whenever the district court has clearly misconstrued the rule). In all of those cases, however, the disciplined attorney was appealing the district court's violation of its local rules in instituting or conducting proceedings against the disciplined attorney. The requirements

of standing focuses on the party bringing the case before the court and not on the issues he wishes to present. Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464, 484 (1982) (citing Flast v. Cohen, 392 U.S. 83, 99 (1968). While a reporting party or attorney is not a party to the disciplinary proceeding that may result from his report, an attorney who is disciplined by the district court has become a party to the proceedings and has a right to appeal. Appellants have brought alleged misconduct to the attention of the court. As mere informers, they have no standing to do anything more.

III. Conclusion

For the reasons stated above, the appeal is DISMISSED.

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LEWIS R. ANDERSON, I.D. BREEDEN, SR., PHILLIP L. KAUBLE, and WADE E, KAUBLE	)	
Appellants,	)	
vs.	)	IP 91-362-C
WILLIAM P. WOODEN, JOHN D. NELL, WOODEN McLAUGHLIN & STERNER, PAUL T. DEIGNAN, JOHN WOOD, and BAMBERGER & FEIBLEMAN,	)	
Appellees.	)	
In re:	)	
CONTINENTAL STEEL CORPORATION f.k.a. PENN-DIXIE STEEL CORPORATION, and PENN-DIXIE INDUSTRIES, INC.,	)	
Debtor,	)	
(Bk. Case No. IP85-5415-V	)	

ENTRY

Appellants, injecting themselves in an

ongoing bankruptcy proceeding filed a report charging attorney misconduct and requesting the bankruptcy court to appoint counsel to investigate. The bankruptcy court dismissed the report and denied appointment of counsel on grounds that no evidence supported their charge of attorney misconduct. Appellants appealed to this court claiming the dismissal was an abuse of discretion.

The order appealed from was not, in the ordinary sense, a final order. This court recognizes, however, that the finality requirement in the bankruptcy context is less rigid than in the ordinary civil context. In re Johns-Manville Corp., 824 F.2d 176, 179 (2nd Cir. 1987); see In re Saco Local Development Corp., 71 F.2d 441, 444 (1st Cir. 1983) ("Congress has long

provided that orders in bankruptcy cases my (sic) be immediately appealed if they finally dispose of discrete disputes within the larger case"). The appellants' filed report alleging misconduct is essentially an independent and discrete filing within a larger context. Accordingly, this court has jurisdiction to consider an appeal of the dismissal as a final order,[1] final as to the issue of whether counsel will be appointed to investigate the charges of attorney misconduct. To the extent the order was not final, the court has jurisdiction to consider this appeal under the "collateral order doctrine." Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949).

The collateral order doctrine permits review of orders which are dispositive

of a collateral issue, sufficienltly independent of the main cause of action, and effectively unreviewable on appeal from a final judgment. Cohen, supra; Economu v. Borg-Warner Corp., 824 F.2d 181 (2nd Cir. 1987). Under Cohen, the order appealed from must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be incapable of a realistic review at the conclusion of the underlying case. Cohen, supra. Accepting that the first two elements of the Cohen test are clearly present here, we recognize that although bankruptcy proceedings continue, in a

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[1] This court has no jurisdiction over the appeal to the extent the order is interlocutory--appellants have not requested nor has the bankruptcy court granted leave to appeal. see 28 U.S.C. §158(a); Rule 8001(b).

practical sense, this case is over. See Bankruptcy court's entry of March 28, 1991 ("The Report of Attorney Misconduct and Motion for Appointment of Counsel are just the latest in an ever lengthening series of attempts to undermine the various settlements in this bankruptcy that are final, no longer appealable, and binding all parties, including the Claimants"). As such, we forsee no realistic "final order," and were we to deny review at this stage, appellants would effectively receive no review of the bankruptcy court's order dismissing the charges of attorney misconduct.

Appellants filed their complaint citing to Disciplinary Enforcement Rule V of Rules of the United States District Court for the Southern District of Indiana. The bankruptcy court in not

bound by the southern district court's rules, see Order Adopting Local Rules, p. vii, but even if it were, Rule V does not create a cause of action or require a judge to appoint counsel to investigate an unsubstantiated charge of attorney misconduct. We review the report and motion, therefore, as a general motion requesting the court to appoint counsel to investigate charges of misconduct, and we review the order denying the motion under an abuse of discretion standard.

Appellant claims of misconduct fall into three groups. First, that attorneys John Wood and Paul Deignan (of the law firm Bamberger & Feibleman) filed claims in bankruptcy without the claimants' consent, second, the attorneys participated in a settlement and liquidation, the funds of which

are now unaccounted for, and third, the attorneys denied an attorney-client relationship between themselves and the claimants, thereby perpetrating a fraud. The bankruptcy court found as fact--having overseen the proceedings for over five years--that the appellants' claims were groundless and that the attorney's never represented the named claimants. The bankruptcy court concluded that "allegations which lack any shred of support and which are clearly incapable of being substantiated are insufficient to bring misconduct "to the attention" of this Court."

Upon review, this court finds the bankruptcy court's factual findings of no fraudulent behavior not clearly erroneous, and therefore it was not an abuse of discretion to deny appellants'

motion for an investigation and the appointment of counsel. Additionally, we note that appellants, after the bankruptcy court denied the motion, took it upon themselves to file a claim of misconduct (charging Brett Clement and Deignan, but not Wood with misconduct) with the Indiana Disciplinary Commission. The commission referred the matter to the Indianapolis Bar Association for a report and investigation. Upon review of the Indianapolis report, the Disciplinary Commission concluded that the attorneys were not guilty of misconduct and dismissed the complaint. This appeal is thus moot as well as meritless.

Accordingly, we dismiss the appeal of the bankruptcy court's order denying the appointment of counsel.

It is so ORDERED this 30th day of September, 1991.

APPENDIX D

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:	) BANKRUPTCY NO.
	) IP85-5415-RWV-7
CONTINENTAL STEEL CORPORATION, f/k/a PENN-DIXIE STEEL CORPORATION and PENN-DIXIE INDUSTRIES, INC.,	)
DEBTOR.	)

ENTRY DENYING CLAIMANTS' MOTION TO APPOINT COUNSEL ON REPORT OF ATTORNEY MISCONDUCT

This matter comes before the Court on the Plaintiffs' Verified Report to the Court of Egregious Attorney Misconduct by William P. Wooden, Esq., John D. Nell, Esq., the Law Firm of Wooden, McLaughlin & Sterner and Pault (sic) T. Deignan, Esq., John Wood, the Law Firm of Bamberger & Feibleman and Motion to Appoint Counsel ("the Report of Misconduct" and "the Motion to Appoint Counsel") filed by Lewis Anderson, I.D.

Breeden, Phil Kauble and Wade Kauble ("the Named Claimants"), by their attorney Mark Garringer ("Garringer") on January 8, 1991. The Court finds no merit to the Report of Misconduct and denies the Motion to Appoint Counsel for the reasons below.

Background Information

The Pension Plan and the Bankruptcy

The Pension Benefit Guaranty Corporation ("the PBGC") is a wholly-owned United States Government Corporation established under 29 U.S.C. section 1302(a) to administer the pension plan program of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under Title IV of ERISA, the federal government guarantees certain benefits under plans of private employers.

Employers are required to meet certain

funding standards with respect to pension plans guaranteed by the PBGC. See 29 U.S.C. section 1082. However, employers may seek waivers of funding requirements from the Secretary of the Treasury, for not more than five consecutive years, if they cannot satisfy the standard without substantial business hardship and if meeting the standards would be averse to the interest of plan participants. See U.S.C. section 1083. With such a waiver, a pension plan may be under funded in an actuarial sense, but not be in violation of ERISA. Many older pension plans were underfunded when they first came under ERISA in the 1970's and have not been able to "catch up" to become fully funded.

The Debtor was a large steel manufacturer whose employees were

covered by several pension plans, including the Continental Steel Corporation 1950 Employee Pension Plan A, ("the Pension Plan" or "the Plan"), in which the Named Claimants were participants. The Plan was established and maintained pursuant to a collective bargaining agreement between the Debtor and United Steelworkers of America ("the Union"), and the Debtor was the administrator of the Plan. The Plan, which was guaranteed by the PBGC, was underfunded, meaning that its assets were insufficient to pay the anticipated benefits that would become due to participants and beneficiaries. The Debtor had gone through a Chapter 11 reorganization in 1980 - 1981. However, it was unable to recover financially despite its reorganization and continued to experience substantial

losses. The Debtor sought and received waivers of the minimum funding requirements for the Plan (and its other pension plans) for the years ending December 31, 1980, 1981, 1982, 1983, and 1984. No further waivers could be sought. On November 25, 1985, the Debtor filed for relief under Chapter 11 of the Bankruptcy Code. The case was converted to Chapter 7 on February 25, 1986, and N. Wayne Etter ("the Trustee") was named trustee.

Claims and Settlements

On February 14, 1986, the PBGC filed an Application for Order to Show Cause, Appointment of a Statutory Trustee and Termination of the Pension Plan ("Application for Termination") in the United States District Court of the Southern District of Indiana, Cause No. 86-186C, seeking authority under 29 U.S.C. section 1342 for terminating the

Plan as of February 14, 1986, and appointing the PBGC as statutory trustee of the Plan. On February 14, 1986, the district court referred the matter to the bankruptcy court, where it proceeded as AP 86-141. The Union and Locals 1056 (sic) and 3601 of the Union (together, for brevity, "the Union") moved to intervene. On March 12, 1986, the Court approved an agreed entry whereby the parties agreed that the Plan be terminated and that the PBGC be appointed statutory trustee, reserving the issue of a termination date.

The PBGC was asserting a termination date of February 14, 1986, which was prior to plant shutdown. If the the (sic) PBGC prevailed, shutdown benefits would not be guaranteed and paid by the PBGC. After lengthy negotiations, (and

some delay caused by the PBGC's involvement in the LTV Steel bankruptcy) the parties agreed that the Plan termination date would be February 25, 1986 (the same date the case was converted to Chapter 7), that plant shutdown would be considered to have taken place on or before February 24, 1986. Thus, since shutdown was before Plan termination, shutdown benefits for eligible employees were covered by the PBGC's guarantee.

As a result of its guarantee obligations with respect to the Plan, and the Debtor's other pension plans, the PBGC was entitled to assert a sizable claim against the Debtor's bankruptcy estate. See 29 U.S.C. section 1362(b).

A large number of former employees and retirees ("the former employees") had

asserted or potentially could assert mechanics and corporate employee liens on the Debtor's assets for unpaid wage and benefits under Ind. Code 32-8-1 and 32-8-24. The Debtor was self-insured with respect to its medical benefits, and many former employees had incurred covered medical expenses that the Debtor had not paid. Also unpaid were substantial amounts of vacation and severance pay. The Union assisted the former employees in making the necessary filings to assert the liens for these claims, and on November 10, 1986, the Union initiated an adversary proceeding, AP 86-593, to determine the validity, priority and extent of the former employees' liens.

The Debtor's major claimants (besides its major lender, which was secured and has been satisfied out of its

collateral) were the Environmental Protection Agency and the Indiana Department of Environmental Management "the environmental claimants"), the PBGC, the former employees, all of which asserted first liens on or priority claims to property of the estate. If the claimants could not agree to share the assets of the estate and the claims were litigated, there was the possibility that one category of claimant could take all the assets and the others would get nothing. For instance, if the environmental claimants prevailed, there would likely be nothing left in the estate for distribution to the PBGC and the former employees. Moreover, without resolution of the competing claims, estate property could not be sold with clear title, funds could not be distributed,

and litigation costs would increase, depleting the estate.

Settlement negotiations were undertaken and on January 28, 1988, the Trustee applied to this Court for approval of a global settlement agreement by which the claims, liens and priorities asserted by the PBGC, the environmental claimants and the former employees would be resolved. To ensure proper notice and due process to all former employees, on February 18, 1988, the Trustee brought an adversary proceeding AP 88-43, against the class of former employees, seeking a determination of the validity and extent of the liens asserted by the former employees. By order dated February 23, 1988, the Court certified two sub-classes, and after a hearing on April 5, 1988, on extensive notice, at which any

objecting party was given the opportunity to be heard, the Court approved settlement of the class action. (AP 86-593 was later dismissed, with respect to the former employees' claims, since those claims were resolved in AP 88-43.) After a hearing on April 12, 1988, the Court held that the proposed global settlement was in the best interests of creditors and the estate,and by order dated April 20, 1988, the Court approved that settlement.

Two former employees, one of whom is one of the Named Claimants, Mr. I.D. Breeden, Sr. ("Breeden") and who purported to speak on behalf of over one hundred other union employees, had objected to approval of the settlement of their claims, and the Court fully heard these objections in in (sic) open

court on April 5, 1988. Breeden's objection was in part based on the assertion that the method used to calculate the claims of the former employees was unfair. The settlement proponents, however, convincingly argued that the complex, individualized method proposed by Breeden would dissipate scarce estate assets and that the simpler method proposed in the settlement would result in a greater distribution to all former employees. Breeden requested was more time to employ counsel and to further evaluate the proposed settlement. The Court, however, concluded that ample notice and time had been provided and that there was no just reason to delay approval of the settlement. The Court therefore overruled both objections and approved the settlement of the former employees' claims.

The class action settlement of the claims of the former employees and the global settlement of the claims of the PBGC, the environmental claimants and the former employees (together "the Settlement") were thus approved after notice and a hearing at which objections were fully heard and considered. No one appealed the orders approving the Settlement and those orders have long been final.

Post-Settlement Events

With the major claims having been settled, the Trustee set about liquidating the remaining assets of the estate and distributing fund according to the Settlement. In late 1989, however, dissatisfied former employees, sometimes represented by attorney Garringer, sometimes purporting to act pro se, began attempting to relitigate

matters that had been earlier resolved, and filing action against various parties involved in the bankruptcy. (This group includes the Named Claimants and others, the constituency of which varies somewhat from action to action. For simplicity, the group will be called "the Claimants".)

An attempt to relitigate the global settlement through appeal of a subsequent court order dealing with certain distributions was dismissed by Judge S. Hugh Dillin of the district court by order dated July 12, 1990.

On February 22, 1990, the Claimants brought an adversary proceeding, AP 90-76, against the Union and Union officials for violations of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. section 401 et seq. This action was dismissed for lack of

subject matter jurisdiction.

On March 20, 1990, the Claimants brought an adversary proceeding, 90-81, against the Trustee, the PBGC, and the former trustee of the Plan assets for failure to advise former employees that the Plan was underfunded. This complaint was dismissed for failure to state a claim.

The Claimants filed applications to remove to this Court cases pending in state court, AP 90-189, 90-197 and 90-242, filed May 7, 1990, May 11, 1990, and June 7, 1990, respectively. The district court has adopted this Court's recommendation to remand or dismiss these removal actions for multiple substantive and procedural defects. AP 90-242 sought removal of a case brought by the Claimants against Bamberger and Feibleman, and members of the firm,

John Wood and Paul Deignan (together "B&F"), which is discussed in more detail below.

The Claimants have filed Rule 60 motions for relief from certain final orders in AP 88-43, 86-593, and in the bankruptcy case itself, on August 31, 1990, June 5, 1990, and August 27, 1990, respectively. These motions have been denied as baseless.

On November 8, 1990, Garringer filed an appearance on behalf of the Claimants in AP 86-141. This appearance was stricken for lack of standing.

Despite the Trustee's and his counsel's opening virtually all their records relating to this case to the Claimants and Garringer and the Trustee's numerous attempts to answer their inquiries about the case, the Claimants filed an onerous discovery request of

the Trustee, first by adversary proceeding, AP 90-28, which was dismissed as procedurally defective, and then by motion. After notice and a hearing, the Court granted the Trustee's request for a protective order respecting the request. The Claimants then filed a motion for removal of the Trustee, which has been denied.

Other objections and motions by Garringer or his clients are still pending. Some of this Court's decisions have been upheld on appeal, the appeals of others are still pending. Motions for sanctions against the Claimants and Garringer are also pending.

The Involvement of the Union and its Attorneys

AP 86-141 was brought by the PBGC to terminate the Pension Plan. Neither the

Union nor the former employees were parties to the action. The Union, however, moved to intervene to contest the proposed early termination date of the Pension Plan, which would have meant that shutdown benefits would not have been guaranteed by the PBGC. The motion to intervene was never formally ruled on, but the Union did brief the issues presented and participated in settlement negotiations. Because the termination date issue was settled (and, the Court notes, favorably to the former employees), the Union's pending motion to intervene was not addressed. B&F represented the Union in this Matter.

The Union assisted former employees in filing the necessary documents to assert mechanics' and corporate employees' liens against the Debtor's

assets. The Union, as plaintiff in AP 86-593, requested a determination of the validity and priority of these asserted liens. B&F represented in this proceeding.

When the Trustee brought AP 88-43 as a class action against all former employees of the Debtor, seeking a determination of the validity of liens they had asserted or might assert, B&F represented the subclass of former Union workers represented by Timothy J. Cheek ("Cheek").

B&F represented the Union and the subclass represented by Cheek, but did not represent individual members of the Union. To the extent the Union's interest in these matters was securing fair and favorable treatment for the former employees, the Union's interest was the same as that of the former employees.

The vast majority of the former employees were satisfied to have their interests represented by the Union in this manner, and in fact, executed powers of attorney explicitly authorizing the Union to represent their interests.

Some former employees, including the Claimants, however, were dissatisfied with the this representation, and employed their own counsel and/or spoke on their own behalf, as was their right. About 200 Claimants, including the Named Claimants, with the apparent exception of Breeden, retained the firms of Hopkins & Sutter and Noel & Noel, to move to intervene on their behalf in AP 86-141. The Union objected to the motion, and after the hearing on the proposed settlement of the Pension Plan termination date, the Claimants'

attorney withdrew the motion to intervene in open court. None of the Claimants appealed this settlement.

All former employees for which there was a known address were notified by first class mail of the proposed settlement of their claims in AP 88-43, and notice by publication was also employed to reach as many former employees as possible. A number of the former employees attended the settlement hearing on April 5, 1988, and one of the Named Claimants, Breeden, purporting to speak for over 100 others, objected in open court. Paul Deignan of B&F stated in no uncertain terms that B&F was counsel for the Union, that although B&F had assisted individuals in the bankruptcy proceeding, it had never accepted representation of any individual former

employee, and that individuals could retain their own counsel if they wished. The Court made it clear that any party was free to retain counsel of his or her choosing, however, the Court found that the time for evaluation of the proposed settlement was passed and that there was no just reason to delay approval of the settlement. None of the Claimants appealed the approval of the settlement in this proceeding.

On March 12, 1990, the Claimants filed a Complaint for Accounting against B&F in the Howard Superior Court No 1, Cause No. 34d01-9003-CP-00084, ("the State Court Action") seeking an accounting based on an alleged attorney-client relationship between B&F and the Claimants, In its answer, B&F represented by William P Wooden, John D. Nell and Katherine L Shelby, of

Wooden McLaughlin and Sterner (together "WM&S") admitted that they filed AP 86-593 and that they appeared on behalf of Cheek in AP 88-43, but denied representing the Claimants individually. The Claimants sought to remove this action to this Court in AP 90-242, and B&F moved to remand or dismiss. On October 22, 1990, this Court submitted to the district court its report recommending the granting of the motion to remand, citing lack of subject matter jurisdiction and numerous procedural defects. On November 29, 1990, the district court adopted this Court's report and recommendation, and the Claimants filed a notice of appeal to the Seventh Circuit.

The Report of Attorney Misconduct

The allegations of the Report of

Attorney Misconduct can be categorized into three groups: (1) allegations that B&F appeared and filed claims in the bankruptcy on behalf of the Claimants without their knowledge or consent, (2) allegations that B&F participated in the settlement of the former employees' claims to $3,500,000.00 and participated in the liquidation of Pension Plan assets of $40,000,000.00, and that these sums are now unaccounted for, and (3) allegations that the answer in the State Court Action, filed by WM&S on behalf of B&F, denying an attorney-client relationship between B&F and the Claimants, was intended to perpetrate a fraud on the state court and perfect concealment of the alleged missing funds.

The Claimants request relief under Rule V(A) of the Rules of Disciplinary

Enforcement for the Southern District of Indiana, which provides:

> When conduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before the Court shall come to the attention of a judge of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, the judge shall refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

Rule IV provides that the Rules of Professional Conduct adopted by the court are the Rules of Professional Conduct adopted by the Supreme Court of the state of Indiana, except as otherwise specifically provided.

The Claimants allege that WM&S have violated Rules 3.3 and 8.4(c) of the Rules of Professional Conduct, respectively requiring candor toward a tribunal and prohibiting conduct

involving dishonesty, fraud, deceit or misrepresentation.

The Claimants allege that B&F have violated the above rules, and also Rule 1.2(a), requiring a lawyer to abide by the client's decisions concerning the objectives of representation, consult with the client about the means by which they are pursued, and abide by the client's decision whether to accept a settlement offer, Rule 1.4, requiring a lawyer to communicate with and provide requested information to the client, Rule 1.5(b), requiring a lawyer to communicate to the client the basis or rate of fee, Rule 1.8(f), limiting a lawyer's ability to accept compensation for representing a client for someone else, Rule 1.15, setting forth requirements for safekeeping a client's property, and Rule 1.16(a), requiring a

lawyer to withdraw from representation if the lawyer is discharged.

The Claimants ask that this Court refer this matter to the Indiana Disciplinary Commission of the Indiana Supreme Court for appointment of special counsel and full investigation.

Discussion

The Court has overseen this bankruptcy for over five years now and has personal knowledge of most of the events that form the basis of the Report of Attorney Misconduct. The record will show that neither B&F, WM&S, nor any attorney associated with either firm was ever entrusted with funds from the settlement of the former employees' claims nor assets funding the Pension Plan. The Claimants' allegations regarding misconduct regarding such funds and

assets are totally without basis.

In support of their allegation that the Union represented or purported to represent them personally, the Named Claimants point to Union's motion to intervene in AP 86-141, which begins "Comes now the United Steelworkers of America, Locals 1054 and 3601, participants and beneficiaries of the [Pension Plan] (hereafter "Applicant"), by counsel, and in support of its Application states: ...." However, in that very pleading, attorneys from B&F placed over their signature lines "Attorneys for the United Steel Workers of America, Locals 1054 and 3601". Any potential confusion over the introductory lines was therefore cleared up in the same document. Moreover, other pleadings filed by B&F in AP 86-141 refer only to the Union

and its locals, further dispelling any confusion over B&F's representation. In any case, inartful wording in isolated pleadings would not constitute conduct warranting disciplinary action.

The Named Claimants also rely heavily on the Union's objection to the Claimants' motion to intervene in AP 86-141, in which the Union asserted that it represented the former employees' interests adequately and that it was the exclusive bargaining agent for its members. The Named Claimants assert that the Union was not entitled to represent them or any of the former employees because the bargaining unit had ceased to exist, citing Allied Chemical & Alkali Workers of America v. Pittsburgh Plate Glass Company, 404 U.S. 157 (1971). That case held that retirees were not "employees"

within the meaning of the National Labor Relations Act, that retirees cannot be included in a bargaining unit with active employees, and that an employer's unilateral modification of was not an unfair labor practice because such benefits were not a mandatory subject of bargaining. The court also noted, however, that "nothing we hold today precludes permissive bargaining over the benefits of already retired employees." 404 U.S. at 171 n.11. The case is obviously not dispositive of the issue of whether the Union, as a matter of labor law, was permitted to represent the interests of former employees under a collective bargaining agreement with the Debtor in AP 86-141. The issue of whether the Union was the exclusive bargaining agent of the former employees was never

resolved because the issue of the Plan termination date was settled and the Claimants' motion to intervene was withdrawn. The fact that B&F, in its memorandum in opposition to the Claimants' motion to intervene, made a legal assertion about the Union's representative capacity that was subject to challenge is simply not conduct warranting discipline.

The Named Claimants' argument regarding other pleadings and action need nor be addressed individually, since they are redundant of those already discussed. The inescapable conclusion is that B&F at no time represented the Named Claimants, or any of the former employees individually. The Named Claimants obviously understood this, because three of them, with about 200 other Claimants, retained their own

counsel to represent them in AP 86-141, and Breeden, at the April 5, 1988, hearing, spoke on his own behalf and purportedly on behalf of over 100 other Claimants in opposition to B&F's position. Breeden and other Claimants attending the April 5, 1988, hearing, heard Paul Deignan state emphatically and repeatedly that B&F represented only the Union and not former employees as individuals. Any attempt to plead surprise now, almost three years later, at B&F's denial of individual representation is disingenuous at best. Any assertion that B&F or the Union compromised their claims without their knowledge is belied by the fact that the Claimants actively participated in AP 86-141 and AP 88-43. Any claim that B&F or the Union prejudiced their interests in AP 86-141 is refuted by

the fact that the PBGC relented in its efforts to set an early Plan termination date (in other words, the former employees won). Any charge that the settlement of the Claimants' claims is invalid because the Union was no longer the former employees' bargaining agent must fail (and has failed in all prior attacks) because, independent of the Union's asserted authority to represent the former employees under the collective bargaining agreement and under the powers of attorney executed by most of the former employees, the settlement of the former employees' claims in AP 88-43 rests soundly on the notice, hearing, opportunity to be heard, and opportunity to appeal afforded each former employee. The Report of Attorney Misconduct and Motion for Appointment

of Counsel are just the latest in an ever lengthening series of attempts to undermine the various settlements in this bankruptcy that are final, no longer appealable, and binding on all parties, including the Claimants.

Because the Named Claimants have stated no grounds for a finding of misconduct by B&F, it follows that their allegations against WM&S are equally unfounded.

The Named Claimants argue that the language of Rule V(A) requires the Court to appoint counsel to investigate any charge of misconduct that comes to its attention which, if substantiated, would warrant discipline. However, allegations which lack any shred of support and which are clearly incapable of being substantiated are insufficient to bring misconduct "to the attention"

of this Court.

The Court therefore DENIES the Named Claimants' Motion to Appoint Counsel.

APPENDIX E

Rule X of Rules of Disciplinary Enforcement of the U.S. District Court, Southern District of Indiana.

RULE X. APPOINTMENT OF COUNSEL

Whenever counsel is to be appointed pursuant to these Rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney, this Court shall appoint as counsel the Executive Secretary and staff attorneys of the Indiana Supreme Court Disciplinary Commission. If such persons decline appointment, or such appointment is clearly inappropriate, this Court shall appoint as counsel one or more members of the bar of this Court to investigate allegations of misconduct or to prosecute disciplinary proceedings under these Rules; provided, however, that the respondent-attorney may move to disqualify an attorney so appointed who is or has been engaged as an adversary of the respondent-attorney in any matter. Counsel, once appointed, may not resign unless permission to do so is given by this Court.

Supreme Court, U.S.
FILED
SEP 25 1992
OFFICE OF THE CLERK

No. 92-388

In The
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

In Re CONTINENTAL STEEL CORPORATION, f/k/a PENN-DIXIE STEEL CORPORATION and PENN-DIXIE INDUSTRIES, INC., Debtor,

LEWIS R. ANDERSON, I.D. BREEDEN, SR., PHIL KAUBLE and WADE KAUBLE,
Petitioners,

v.

PAUL T. DEIGNAN, JOHN WOOD, BAMBERGER & FEIBLEMAN, WILLIAM P. WOODEN, JOHN D. NELL, and WOODEN McLAUGHLIN & STERNER,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

William P. Wooden *
Katherine L. Shelby
WOODEN McLAUGHLIN & STERNER
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Indianapolis, IN 46204
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Attorneys for Respondents

* Counsel of Record

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QUESTIONS PRESENTED

1. Should the Petition be granted to review the holding of the Court of Appeals that Petitioners, who filed a request for disciplinary action against Respondents in the Bankruptcy Court, lacked standing to appeal the Bankruptcy Court's finding that there was no fraudulent behavior by Respondents that warranted referral to the Indiana Disciplinary Commission for investigation?

2. Should the Petition be granted to review the holding of the Court of Appeals that the District Court correctly found that Petitioners' appeal from the Bankruptcy Court's finding of no fraudulent behavior which warranted investigation by the Indiana Disciplinary Commission is moot because Petitioners had filed the same allegations of misconduct directly

with the Indiana Disciplinary Commission, which, on April 4, 1991, found those charges to be without merit?

3. Should the Petition be granted to review the District Court's holding that the Bankruptcy Court did not abuse its discretion by failing to appoint the Indiana Disciplinary Commission to investigate allegations of fraudulent behavior which allegedly occurred in a proceeding before it?

4. Should the Petition be granted to review the merits of Petitioners' claims when Petitioners have admitted, on appeal, that Bamberger & Feibleman did not represent them individually, which was the basis for their Report of Misconduct?

LIST OF PARTIES

Pursuant to Rule 24.1(b), 24.2, the parties to the proceeding in the Court of Appeals are:

Appellants:

Lewis R. Anderson, I.D. Breeden, Sr., Philip L. Kauble, and Wade E. Kauble

Appellees:

Paul Deignan, Esq., John Wood, Esq., Bamberger & Feibleman, William P. Wooden, Esq., John D. Nell, Esq., and Wooden McLaughlin & Sterner

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OPINIONS BELOW

Lewis R. Anderson, I.D. Breeden, Sr., Philip L. Kauble, and Wade E. Kauble (hereinafer "Petitioners") have not included within their Appendix (hereinafter referred to as "Pet. App.") all of the entries below.

They have not included the Judgment of the United States District Court for the Southern District of Indiana entered September 30, 1991, which Judgment is contained in Respondents' Appendix (hereinafter referred to as "Res. App."), p. A-31.

Petitioners have alsc failed to include the Order of the United States Court of Appeals for the Seventh Circuit entered July 10, 1992, upon Appellees' Motion for Sanctions pursuant to Appellate Rule 38, Res. App., p. A-33, and the Entry of August 7, 1992, of the United States Court of

Appeals for the Seventh Circuit denying Petitioners' "Motion to Recall Mandate and Motion for Leave to File Motion [For Rehearing En Banc] Instanter," Res. App., p. A-40. On September 18, 1992, the Court of Appeals awarded sanctions in the amount of $1,000.00 plus costs of the appeal, and taxed those sanctions against Petitioners' counsel, Mark Garringer. Res. App. p. A-42.

COUNTERSTATEMENT OF THE CASE

This proceeding was commenced on January 8, 1991, by Lewis Anderson, I.D. Breeden, Phil Kauble and Wade Kauble ("Petitioners") filing their "Verified Report to the Court of Egregious Attorney Misconduct by William P. Wooden, Esq., John D. Nell, Esq., Wooden McLaughlin & Sterner and Paul T. Deignan, Esq., John Wood and the Law Firm of Bamberger & Feibleman

and Motion to Appoint Counsel" ("Report of Misconduct") in the bankruptcy case of Continental Steel Corporation ("CSC"), pending before Judge Vandivier in the United States Bankruptcy Court, Southern District of Indiana, Indianapolis Division, Bankruptcy No. IP85-5415-RWV-7. Res. App., p. A-1.

In their Report of Misconduct, Petitioners requested the Bankruptcy Court to refer their allegations of misconduct to the Indiana Supreme Court Disciplinary Commission ("Disciplinary Commission") for investigation pursuant to Rule V of the Rules of Disciplinary Enforcement of the United States District Court for the Southern District of Indiana.

Petitioners' Report of Misconduct, filed in the general bankruptcy case of CSC, a large steel manufacturer with plants in Kokomo, Indiana, and Joliet,

Illinois, alleged misconduct on the part of Paul Deignan, John Wood and Bamberger & Feibleman (hereinafter jointly referred to as "B&F"), counsel for the United Steelworkers of America. The United Steelworkers of America ("USWA") (Locals 1054 and 3601) was the official collective bargaining agent for the Union employees at the Kokomo plant of CSC where Petitioners had been employed. R. 218.

The main theme of the allegations in Petitioners' Report of Misconduct was that B&F: (1) represented Petitioners in the CSC bankruptcy and rendered their claims therein to money without notice to, knowledge of, or consent of Petitioners; (2) was without any legal authority to represent Petitioners; (3) rendered Petitioners' wage claims to money which was unaccounted for; and (4) participated

in the liquidation of the assets of CSC's Pension Plan A and the $40 million funding of that Pension Plan was unaccounted for. Res. App., pp. A-1-16. As to their allegations in their Report of Misconduct against William P. Wooden, John D. Nell, and Wooden McLaughlin & Sterner (hereinafter jointly referred to as "WMS"), Petitioners argued that WMS was guilty of fraud for asserting the factual and legal position of its client, B&F, that B&F did not represent Petitioners individvually but, instead represented the USWA and a subclass. Res. App., pp. A-6-8.

Petitioners' allegations of misconduct by B&F relate to two major proceedings of the CSC bankruptcy: (1) the Pension Plan litigation; and (2) the adjudication of the mechanic's and corporate employee liens asserted

against CSC's assets by the members and retired former members of USWA.

The Continental Steel Corporation 1950 Employee Pension Plan A ("Pension Plan A") was established and maintained pursuant to a collective bargaining agreement between CSC and USWA. R. 146-213. CSC was the Administrator of the Plan, R. 190, which was guaranteed by the Pension Benefit Guaranty Corporation ("PBGC"). R. 145A.

In the United States District Court, the PBGC filed an application for termination of Pension Plan A as of February 14, 1986, and for the appointment of PBGC as the Statutory Trustee of the Plan. R. 145. The USWA (by its counsel, B&F), as the official bargaining agent for Locals 1054 and 3601 who negotiated and obtained Pension Plan A, moved to intervene generally as a defendant in the PBGC's

action to terminate Pension Plan A. R. p. 218. PBGC's action to terminate Pension Plan A was transferred to the Bankruptcy Court, where it proceeded as Adversary Proceeding 86-141 ("AP 86-141").

On March 6, 1986, the Bankruptcy Court approved an Agreed Entry among the PBGC, USWA, and the Bankruptcy Trustee for the Estate of CSC to terminate Pension Plan A and to appoint PBGC as the Statutory Trustee, while reserving the determination of a termination date of Pension Plan A until a later date. R. 222. Pursuant to that Agreed Entry, all documents and all assets funding Pension Plan A held by the Trustee or State Street Bank & Trust Company were turned over to the PBGC. Id.

The PBGC had requested a termination date of February 14, 1986,

which was prior to plant shutdown. R. 145A. If the PBGC prevailed, then shut-down benefits under the Plan would not be guaranteed and paid by PBGC. After lengthy negotiations, the PBGC, the Trustee and the USWA, agreed that the plan termination date would be February 25, 1986, and that plant shutdown would be considered to have taken place on or before February 24, 1986, R. 279-80, making shutdown benefits for eligible employees guaranteed by the PBGC.[1]

On February 1, 1988, about the time the PBGC, the Trustee and the USWA had agreed upon a termination date prior to plant shut down, the law firms of Hopkins & Sutter and Noel & Noel moved

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[1] In other words, as the Bankruptcy Court ruled in dismissing the Report of Misconduct, the former employees, including Petitioners, won. Pet. App., p. 72.

to intervene in AP 86-141 on behalf of certain Plan participants, including Petitioners (except Breeden). R. 225. The USWA objected to the Motion for Leave to Intervene because the USWA, which was the official bargaining agent under the collective bargaining agreement (including Pension Plan A) had concluded the proposed Settlement Agreement regarding the termination date of Pension Plan A with the Trustee and PBGC. R. 276. That proposed Settlement Agreement had been filed with the Court and a hearing set on March 10, 1988. R. 279. On March 10, 1988, Hopkins & Sutter and Noel & Noel withdrew their Motion to Intervene.

In their Statement Of The Case, Petitioners have mislead the Court about the proceedings by which the mechanic's and corporate employee liens claims by the members and retired

former members of USWA were adjudicated. By omitting a discussion of relevant proceedings, Petitioners seek the Court to believe that their claims were adjudicated without any notice to them. See Petitioners' Brief, pp. 5-7. That is not true. The mechanic's and corporate employee lien claims were adjudicated in a class action, of which Petitioners received notice as members of a certified subclass and in which Petitioners participated. R. 564, 596, 611-12, 634-704, 714-19.

The USWA assisted its members and retired former members in asserting mechanic's and corporate employees' liens on CSC's assets, under Ind. Code 32-8-3 and 32-8-24, for unpaid wages and benefits due under the collective bargaining agreements between CSC and USWA. On November 10, 1986, the USWA

initiated Adversary Proceeding 86-593 ("AP 86-593") to determine the validity, priority and extent of the former employees' liens. R. 431. The amount of the liens asserted by the employees exceeded the assets of the Estate of CSC. R. 706-77. In addition to the claims of the employees, CSC's major claimants were the United States Environmental Protection Agency ("EPA"), the Indiana Department of Environmental Management ("IDEM") and the PBGC. Id.

After the assertion of the former employees' liens and the filing of the Complaint in AP 86-593, the EPA, IDEM, PBGC, USWA (on behalf of its members and former retired members) and the Trustee entered into settlement negotiations. A proposed global Settlement Agreement of all their claims was reached. On January 28,

1988, the Trustee applied to the Bankruptcy Court in the general bankruptcy (IP 85-5415) for approval and authority to enter into a global Settlement Agreement with the EPA, IDEM, PBGC and former employees of CSC.

In order to bind the former employees to the terms of the Settlement Agreement, on January 29, 1988, the Trustee filed a class action in Adversary Proceeding 88-43 ("AP 88-43") to determine the validity and extent of the employees' liens. R. 564. The defendants in AP 88-43 were Timothy J. Cheek and Glynda J. Crousoure, on behalf of themselves and all former employees of CSC (which included Petitioners). Id. The Trustee requested the Bankruptcy Court to certify the action as a class action, and on February 23, 1988, the Bankruptcy Court entered its Findings

of Fact, Conclusions of Law and Order authorizing the action to proceed as a class action and certifying two subclasses. R. 596.

Timothy Cheek was the representative of one subclass, consisting of former employees of CSC who were members of the collective bargaining units represented by USWA and whose claims were based on previously negotiated collective bargaining agreements. R. 597-98. On February 23, 1988, B&F entered an appearance and filed an Answer on behalf of Mr. Cheek. R. 591, 565.

On February 24, 1988, in AP 88-43, the Bankruptcy Court entered an Order setting a hearing on the proposed settlement of the class action for April 5, 1988. R. 609-10. A written notice was given to all class members informing them that the proposed

Settlement Agreement was available for inspection, that a class had been certified in AP 88-43, that a hearing was to be held on April 5, 1988 in AP 88-43 to determine whether the proposed settlement was fair and reasonable for the former employees, that all objections to whether the settlement was fair and reasonable for former employees were to be filed on or before April 4, 1988, that a hearing was to be held on April 12, 1988, in IP 85-5414 to determine whether the proposed settlement was in the best interests of the Estate of CSC and its creditors generally, and that any objections were to be filed on or before April 7, 1988. R. 611-12. The notices were mailed to all former employees of CSC at their last known addresses on March 16, 1988, and published in six prominent newspapers. R. 616-33.

On April 1, 1988, Breeden, one of the Petitioners herein, filed an Objection to the proposed settlement in IP 85-5415 (instead of AP 88-43), stating that he was objecting on his own behalf and on behalf of others, including Kauble. R. 21-22.

In AP 88-43, a hearing was held on April 5, 1988, to determine whether the settlement was fair and reasonable to the CSC former employees. Transcript of Hearing, R. 634-704. Among those in attendance at the hearing on April 5, 1988, was Breeden, who spoke on the record on his own behalf and on behalf of over 100 union employees. R. 684-89. Breeden objected to the approval of the settlement of his claims, which objection was heard in open court and overruled. Id.

On April 12, 1988, after notice to all creditors including CSC former

employees, the Bankruptcy Court held a hearing in IP 85-5415 on the Trustee's Application for Approval of and for Authority to Enter into Settlement Agreement with EPA, IDEM, PBGC and former employees of CSC.

The Bankruptcy Court entered its Order of April 20, 1988, in AP 88-43, finding that due notice had been given to the former employees of CSC of the proposed settlement and that, notwithstanding Breeden's objection, the settlement was a fair, reasonable and adequate resolution of the asserted claims of the Class. R. 714-19. The Bankruptcy Court, on April 20, 1988, also entered its Findings of Fact, Conclusions of Law and Order in IP 85-5415 approving the settlement. None of the former employees, including Petitioners herein, appealed from those Orders.

On November 13, 1989, the Bankruptcy Court entered its Order approving the distribution of settlement payments to former employees, including Petitioners herein, pursuant to the global Settlement Agreement. R. 43-45

After the approval of the Settlement Agreement in AP 88-43 and in IP 85-5415, the Trustee and USWA filed a Joint Motion to Dismiss the complaint filed in AP 86-593 because the validity and priority of the claims asserted therein had been adjudicated, after notice and hearing, in AP 88-43. R. 481-86. Thus, on October 6, 1989, the Bankruptcy Court dismissed all former employees of CSC and their claims from AP 86-593, "taking note of its own record herein which demonstrates that the claims of former employees have been fully resolved by settlement in

Adversary Proceeding No. 88-43 and that the Agreements approved in the Adversary were also approved after notice and opportunity for hearing in the general bankruptcy proceeding herein." R. 488; Res. App., p. A-24.

On March 28, 1991, Judge Vandivier, the Bankruptcy Judge who had presided over the CSC bankruptcy case for at least five years, entered his "Entry Denying Claimants' Motion to Appoint Counsel on Report of Attorney Misconduct," wherein he found not a "shred of support" for Petitioners' Report of Misconduct and denied Petitioners' Motion to Appoint Counsel. Pet. App. D.

On April 2, 1991, Petitioners filed a Notice of Appeal in the United States District Court for the Southern District of Indiana, appealing Judge Vandivier's ruling on the Report of

Misconduct. Petitioners filed their Brief of Appellants and Appendix in the District Court on July 2, 1991.

On August 5, 1991, Respondents filed their Motion to Dismiss, Brief in support thereof, and the Affidavit of Paul Deignan, requesting the District Court to dismiss Petitioners' appeal because they lacked standing to appeal and the appeal was moot. Respondents argued that Petitioners, as complainants in a disciplinary matter, lacked standing to pursue an appeal of the Bankruptcy Court's finding that their allegations of misconduct lacked any shred of support. Respondents also argued the appeal was moot because Petitioners had already received the relief they had requested in their Report of Misconduct, i.e., an investigation of their allegations of

misconduct by the Disciplinary Commission.

Breeden, Anderson, and Kauble had each filed grievances with the Disciplinary Commission alleging the same allegations of misconduct against B&F that they had stated in their Report of Misconduct to the Bankruptcy Court. Exhibits A-D to the Affidavit of Paul T. Deignan, R. Loose Pleading Vol. 9. Breeden, Anderson, and Kauble's complaints were reviewed by the Disciplinary Commission and were dismissed on April 4, 1991, by the Disciplinary Commission as being without merit. Certification of Records by the Disciplinary Commission Executive Secretary, Exhibit A to Appellees' Brief in Opposition to Strike. R. Loose Pleading Vol. 10.

On September 30, 1991, the District Court found that the Bankruptcy Court

did not abuse its discretion in finding there was no basis for the allegations of misconduct and that the appeal was moot because Petitioners had already brought their allegations of misconduct to the attention of the Disciplinary Commission, which was the relief they requested on appeal.

On June 17, 1992, the Seventh Circuit Court of Appeals dismissed Petitioners' appeal from the District Court's Judgment, finding Petitioners had no standing to appeal. Pet. App., pp. 34-36.

On June 24, 1992, Respondents filed in the Court of Appeals their Motion for Sanctions under Appellate Rule 38. By its Order dated July 10, 1992, the Court of Appeals found that sanctions, in the form of damages against Petitioners' counsel, were appropriate under Appellate Rule 38, because on

appeal Petitioners made no attempt to address the mootness issue, a basis for the District Court's Judgment. Res. App., pp. A-35-36. Also, the Court of Appeals found Petitioners had failed to cite any controlling authority or distinguish the controlling authority cited by Respondents on the standing issue. The Court of Appeals found that Petitioners "wholly ignored the jurisdictional issues squarely raised by their appeal." Res. App., p. A-36.

On July 24, 1992, the Court of Appeals received Petitioners' Petition for Rehearing En Banc, which was returned to Petitioners unfiled because it was untimely. Res. App., p. A-38. On July 31, 1992, Petitioners filed their "Motion to Recall the Mandate and Motion for Leave to File Motion Instanter," which was denied by the

Court of Appeals on August 7, 1992. Res. App., p. A-40.

On September 18, 1992, the Court of Appeals awarded sanctions in the amount of $1,000.00 plus costs of the appeal, and ordered them taxed against Petitioners' counsel, Mr. Garringer.[2]

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2 Petitioners have also pursued appeals to the Seventh Circuit Court of Appeals from the District Court's denial of their Rule 60(B) Motion in their state court Action for Accounting against B&F they removed to District Court (referred to in Petitioners' Brief at 7) and from the Bankruptcy Court's striking of Mr. Garringer's Appearance filed in AP 86-141 on November 8, 1990. In both of those appeals, the Seventh Circuit Court of Appeals found the appeals to be frivolous and ordered Mr. Garringer to file a brief as to why he should not pay the appellees' costs for appeal. Order of June 4, 1992, In Re Continental Steel Corp.: Appeal of Anderson, et al., No. 91-1416 (7th Cir. June 4, 1992); Order of July 10, 1992, Kauble, et al. v. United Steelworkers of America, et al., No. 91-3368 (7th Cir. July 10, 1992).

SUMMARY OF THE ARGUMENT

Because Petitioners are informants who requested a Bankruptcy Court to discipline attorneys pursuant to its inherent power, they do not have standing to appeal the Bankruptcy Court's refusal to discipline those attorneys.

Petitioners' appeal is moot because they have already filed their allegations of misconduct directly with the Disciplinary Commission which reviewed and dismissed those allegations. Thus, the relief Petitioners requested from the Bankruptcy Court and continue to request here has been granted to them.

The Bankrutpcy Court has inherent jurisdiction to discipline attorneys who practice before it.

Petitioners have conceded that Bamberger & Feibleman did not represent

them individually so that the basis of their Report of Misconduct is admittedly wrong.

Judge Vandivier did not abuse his discretion in finding there were no allegations of misconduct that should be referred to the Disciplinary Commission.

B&F never had control and possession of any funds of the Estate of CSC. B&F's assertion in a pleading that USWA was the exclusive bargaining agent for its members was legally correct and does not warrant discipline.

Petitioners' report of misconduct is another attempt to attack collaterally the Settlement Agreement.

REASONS FOR DENYING THE PETITION

I. PETITIONERS LACK STANDING TO APPEAL BANKRUPTCY COURT'S DECISION ON THEIR ALLEGATIONS OF MISCONDUCT.

The Court of Appeals correctly found that Petitioners, as complainants in a disciplinary matter, do not have standing to appeal from the Bankruptcy Court's refusal to discipline Respondents.

The Court of Appeals followed well-established authority of the Seventh, First and Eighth Circuits that an individual who reports alleged misconduct by an attorney to a court has no standing to appeal the court's decision not to discipline the attorney. See In Re Echeles, 430 F.2d 347, 350 (7th Cir. 1970)(United States Attorney had standing to appeal only because three-judge Executive Committee of District Court gave him authorization to do so); In Re

Teitelbaum, 253 F.2d 1, 2 (7th Cir. 1958)(United States Attorney who had filed a petition for the disbarment of another attorney lacked standing to appeal the district court's denial of the petition); Ramos Colon v. United States Attorney, 576 F.2d 1, 5-6 (1st Cir. 1978)(A criminal defendant who requested the district court to conduct a hearing on allegations that the prosecutor had acted in bad faith in prosecuting Colon for his political beliefs lacked standing to pursue and appeal from the district court's rejection of his allegations); Mattice v. Meyer, 353 F.2d 316, 319 (8th Cir. 1965)(Private citizens cannot appeal a district court's denial of their request for disciplinary action against an attorney).

As the Eighth Circuit found in Mattice, a request for disciplinary

action does not initiate an action, either civil or criminal, but rather "invokes the inherent power of the courts to maintain the integrity of the bar." 353 F.2d at 319. Neither the Federal Rules of Civil Procedure nor the Rules of the United States District Court were found by the Eighth Circuit Court of Appeals in Mattice to authorize an individual to maintain a disbarment action against a lawyer. Rather, the private citizen acts as an informer:

> An individual may, acting as an informer, make available to the district court pertinent information bearing upon the qualifications or professional conduct of a member of the federal bar. Beyond that point the individual may not exercise control over the proceedings. Further action, if any, becomes the responsibility of the court.

Id.

Petitioners have completely ignored this clear authority, in the District Court, in the Court of Appeals and here. They have failed to distinguish, or even discuss, any of the cases relied upon by the Court of Appeals. Rather, Petitioners argue the standing issue as if they had brought a claim for damages against Respondents for monies they claim are owed to them by Respondents.

Petitioners incorrectly focus upon the question of whether they have standing to raise the issue of where the money for their claims allegedly went, citing Flast v. Cohen, 392 U.S. 83 (1968) and S. v. D., 410 U.S. 614 (1973), and whether they have suffered a "palpable economic injury," citing Sierra Club v. Morton, 405 U.S. 727 (1972). Petitioners are evidently still confused about the issue of

standing. The standing question here is whether they have a right to mandate the Bankruptcy Court to discipline attorneys based upon allegations they filed with the Bankruptcy Court. The Local Rules pursuant to which Petitioners filed their Report of Misconduct do not create any cause of action to which they are a party; rather, those Rules establish a procedure the court follows in the exercise of its inherent right to oversee the integrity of the conduct of its officers.

None of the cases cited by Petitioners support reversal of the Court of Appeals' opinion. Baker v. Carr, 369 U.S. 186 (1962), addressed the issue of standing in a case involving the challenge of the constitutionality of a state statute. Flast v. Cohen, 392 U.S. 83 (1968),

addressed the issue of standing in a taxpayer's lawsuit challenging the expenditures of federal funds as being unconstitutional. Sierra Club v. Morton, 405 U.S. 727 (1972), addressed the issue of standing in an action to restrain officials from approving a skiing development in a national game refuge and forest. None of these cases involve the question of whether private individuals who report alleged misconduct to a court can appeal from the court's refusal to discipline attorneys.

S. v. D., 410 U.S. 614 (1973) supports the Court of Appeals' conclusion that an informant in a disciplinary action does not have standing to appeal a court's refusal to discipline another attorney. As the Court found in S. v. D., in a case analogous to that herein, "a private citizen lacks a judicially cognizable

interest in the prosecution or non-prosecution of another." 410 U.S. at 619. Thus S. v. D. is not contrary to the Court of Appeals' opinion herein.

Because a disciplinary action involves a court's exercise of its power to maintain the integrity of the court, an individual who makes allegations of misconduct to the court clearly does not have a personal stake in the outcome of the controversy.

Petitioners repeatedly argue they have a right to know where their claims rendered to money went.[3] Indeed,

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3 The Bankruptcy Court correctly found, and the Record shows, that Petitioners were well aware their claims had been adjudicated in the class action in AP 88-43, of which they received notice and in which they participated. Respondents pointed out below that Petitioners were well aware that settlement funds have been paid pursuant to the terms of the Settlement Agreement and that Petitioners had received some of those funds.

they have several courses of action available to them to answer that question. They could bring an action against B&F to recover any monies allegedly held by B&F.[4] They could bring an action against the trustees of the Union Employee Discretionary Trust Fund for an accounting as to any claims they have against the fund. In such actions they would have standing. However, as complainants who brought allegations of misconduct to the attention of the Bankruptcy Court, Petitioners lack standing to appeal the Bankruptcy Court's decision.

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4 As the Record shows without dispute, B&F never had any possession and control of any funds of the Estate of CSC. R. 132. Further, Petitioners have sued B&F for alleged attorney malpractice and that action is pending in the Marion County, Indiana Superior Court No. 1. R. 103AAAAAA.

II. DISCIPLINARY COMMISSION'S INVESTIGATION OF SAME MISCONDUCT ALLEGATIONS FILED WITH IT BY PETITIONERS RENDERS APPEAL MOOT.

The Petition also should not be granted because Petitioners' appeal is moot. As the District Court correctly found,[5] Petitioners filed the same allegations of misconduct directly with the Disciplinary Commission that they reported to the Bankruptcy Court in their Report of Misconduct. Petitioners' complaints of misconduct were filed with the Disciplinary Commission by Breeden on June 22, 1988, by Anderson on March 13, 1989, and by

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5 Respondents argued both in the District Court and in the Court of Appeals that Petitioners' appeal was moot. The District Court agreed. In granting Respondents' Motion for Sanctions under Appellate Rule 38, the Court of Appeals found Petitioners made no attempt to address this issue on appeal.

Kauble on June 22, 1988 and September 13, 1990. See Exhibits A-D to Affidavit of Paul T. Deignan, R., Loose Pleading Vol 9. Those complaints were reviewed by the Disciplinary Commission and dismissed on April 4, 1991, because they were without merit.

Petitioners have never disputed that their allegations filed with the Disciplinary Commission were the same as their allegations in their Report of Misconduct. Indeed, a review of those complaints shows the same arguments presented in their Petitioners' Brief here (and in their Verified Report) were presented to the Disciplinary Commission.

For instance, in the complaint of June 22, 1988, filed by Kauble and Breeden, they contended that the USWA had no right to represent retirees and had no valid consent forms (i.e. powers

of attorney) until May 12, 1987. Deignan's Aff., Exh. A, R., Loose Pleading Vol. 9. They contended B&F represented the individuals who had filed lien claims for two years and then transformed those claims into a class action "without knowledge or consent" of the individuals. Id.

In his March 13, 1989 Complaint, Anderson contended that because he was no longer a member of the USWA, as of the date when CSC ceased to exist, the USWA was not a legal representative under the collective bargaining agreement or federal labor law and had no right to represent the interests of its former members. Deignan's Aff., Exh. C, R., Loose Pleading Vol. 9.

Kauble stated in his Complaint that B&F settled claims and possessed property of the retirees and early retirees, including Kauble, who were

represented as individuals by B&F. Deignan's Aff., Exh. D, (¶ 10), R., Loose Pleading Vol. 9. Kauble stated B&F was the legal representative of the subclass of claimants on February 23, 1988, wherein their claims were rendered to money "in complete concealment" to the claimants and after the local union had ceased to exist on that date. (¶¶ 23-24). Kauble argued the USWA, who had never filed a proof of claim as a creditor in the CSC bankruptcy, had no authority to represent the retirees. (¶¶ 12-13, 16). Kauble argued that B&F had no legal authority to represent him and others similarly situated, (¶¶ 10-11), that he was not informed of the settlement until after the fairness hearing on April 5, 1988, (¶ 7), and that his counsel (B&F) did not meet its duties of disclosure. (p. 19).

Petitioners have thus already presented to the Disciplinary Commission their position that B&F represented them individually in AP 86-141 and AP 88-43, without their consent or knowledge. They have further informed the Disciplinary Commission that if B&F was counsel for the USWA which represented their interests, the USWA had no right to represent Petitioners because they were retirees and former employees of CSC.

In their appeal to the District Court, the Court of Appeals, and now in their Petition for Writ of Certorari, Petitioners seek an appellate court to order the Bankruptcy Court to refer the same allegations of misconduct to the same place, the Disciplinary Commission, for investigation. Because Petitioners have already received the relief that they request, i.e., an

investigation of their allegations of misconduct by the Disciplinary Commission, their appeal is moot and the Petition for Writ of Certiorari should not be granted.

It is well-established that if during the pendency of an appeal an appellant obtains the relief which he or she seeks, the case must be dismissed as moot. Swanson v. West Publishing Co., 869 F.2d 1104 (8th Cir. 1989); People of State of New York by Abrams v. Seneci, 817 F.2d 1015 (2nd Cir. 1987); Lowe v. Duckworth, 663 F.2d 42 (7th Cir. 1981). Because Petitioners filed complaints for disciplinary action with the Disciplinary Commission in 1988-1990, which complaints contained the same allegations of misconduct contained in the Report of Misconduct filed with the

Bankruptcy Court,[6] and the Disciplinary Commission ruled, on April 4, 1991, upon those complaints, Petitioners' appeal is moot, and the Petition for Writ of Certiorari should not be granted.

III. BANKRUPTCY COURT HAS JURISDICTION TO DETERMINE WHETHER TO DISCIPLINE ATTORNEYS.

Petitioners erroneously argue the Bankruptcy Court lacks jurisdiction to determine whether allegations of

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6 The Report alleged WMS was guilty of misconduct in filing an Answer for its client, defendant B&F, in the Clinton Circuit Court asserting B&F's position that B&F did not represent Petitioners individually. Because the allegations of whether B&F represented Petitioners individually were contained in the complaints filed with the Disciplinary Commission by Respondents, the question of whether WMS' assertion of B&F's position that B&F did not represent Petitioners individually has already been reviewed by the Disciplinary Commission.

attorney misconduct lack any shred of support.[7] Petitioners' Brief at 19-21. Courts have the "inherent power" to sanction attorneys who practice before them. Ramos Colon v. U.S. Attorney for District of Puerto Rico, 576 F.2d 1, 3 (1st Cir. 1978).

Petitioners' argument that the Bankruptcy Court lacked jurisidiction because it is not an Article III Court, Petitioners' Brief at 20-21, need not be addressed because Petitioners did not raise that argument in the District Court or Court of Appeals. When they appealed to the District Court, they

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7 If Petitioners believe the Bankruptcy Court lacked jurisdiction to make a determination of their allegations of misconduct, one wonders why they ever bothered to file them, especially in light of Petitioners' statement that "Anderson is not requesting the 'adjudication' of a particular issue from the bankruptcy court." Petitioners' Brief at 23.

did not argue that the District Court as an Article III Court, and not the Bankruptcy Court, had jurisdiction to make a determination on their allegations. They asked the District Court to review the Bankruptcy Court's decision to determine if it was an abuse of discretion.

The District Court reviewed the Bankruptcy Court's Order and found that the "Bankruptcy Court's factual findings of no fraudulent behavior [are] not clearly erroneous" and that the Bankruptcy Court's ruling was not an abuse of discretion. Pet. App., pp. 53-54.

Petitioners have shown no reason to grant their Petition.

IV. DISTRICT COURT PROPERLY FOUND NO ABUSE OF DISCRETION.

A. Petitioners Have Abandoned Basis For Report Of Misconduct.

Petitioners alleged in their Report of Misconduct, and argued in the

District Court, that B&F represented them individually in the CSC bankruptcy, without consent of Petitioners and without legal authority, and rendered Petitioners' claims to money, which was allegedly unaccounted for. Res. App., p. A-1. Petitioners argued B&F violated various Rules of Professional Conduct in its representation of them. Id.

Similarly, in their Report of Misconduct, Petitioners argued WMS' filing of an answer in the Clinton Circuit Court, which denied any attorney-client relationship between B&F and Petitioners individually, was a "bald" lie, fraud upon the Clinton Circuit Court, and a RICO violation, done "to perfect the concealment of missing funds." Res. App., pp. A6-8.

However, in the Court of Appeals and here, Petitioners have admitted B&F

did not represent them individually. Thus, they have abandoned the basis for their Report of Misconduct, and the Answer filed by WMS on behalf of B&F was accurate. Because the basis for the Report of Misconduct is now admittedly false, the Court should stop here and deny the Petition.

B. Bankruptcy Court's Findings Of No Fraudulent Behavior Not Clearly Erroneous.

Not only have Petitioners abandoned their argument that B&F represented them individually, but they have also abandoned a number of arguments regarding the fraudulent conduct B&F allegedly engaged in. For instance, as to the Pension Plan funds, Petitioners argued below that $40 million of those funds were unaccounted for and B&F should account for them. The evidence in the Record is undisputed that neither B&F nor WMS ever received, or

was entrusted with those funds, which were turned over to the PBGC! R. 224. Petitioners have now abandoned this argument.

As to those arguments asserted by Petitioners here and in the Report of Misconduct, the Bankruptcy Court properly found they had no basis.

First, the Record does not support Petitioners' allegations that B&F has "rendered [their] claims to money" and failed to account therefor. Petitioners' Brief at 12, 13. Petitioners' mechanic's lien claims and/or corporate employee claims were adjudicated in AP 88-43, after notice to them and an opportunity to be heard. R. 714-19. Orders approving distributions paid under the global Settlement Agreement were entered by the Bankrutpcy Court. R. 43. Moreover, the evidence in the Record is

undisputed that B&F never had any possession and control of any funds of the Estate of CSC. R. 132.

The Bankruptcy Court properly found B&F's legal assertion in a pleading in AP 86-141 that USWA was the exclusive bargaining agent for its members was not conduct warranting discipline. Pet. App., p. 85. The USWA had authority, as the exclusive bargaining agent, to intervene in AP 86-141 and represent its members and former retired members on the issue of the termination date of Pension Plan A.

Petitioners' assertion that the USWA had no authority, as exclusive bargaining agent, to intervene in AP 86-141 is based upon an incorrect interpretation of Allied Chemical v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971).

Allied Chemical does not hold that a union cannot enforce a contract between it and the debtor in bankruptcy. Allied Chemical only holds that retirees are not "employees" within the meaning of the National Labor Relations Act and retiree benefits are not a mandatory subject of collective bargaining. Moreover, the Supreme Court noted that its decision in Allied Chemical did not preclude "permissive bargaining over the benefits of already retired employees." 404 U.S at 171, n. 11.

The USWA intervened in AP 86-141 (before the case was converted) to contest the Pension Plan A termination date requested by the PBGC. Pension Plan A was between CSC and USWA, the official collective bargaining agent. R. 146, 149. As a party to that agreement, USWA had standing to contest

the proposed termination date. See In Re Braniff Airways, Inc., 33 B.R. 1 (N.D. Tex. 1983) (Individual union members have no standing to assert claims based on alleged violations of collective bargaining agreements; the Union had such standing). Further, the Union has standing to sue on behalf of retirees. USWA v. Canron, Inc., 580 F.2d 77 (3rd Cir. 1978). In Canron, the USWA sought arbitration of a dispute with the company over whether the company would continue to provide health and life insurance coverage to retirees. The company, citing Allied Chemical, argued that the USWA lacked standing to sue on behalf of retirees. The Third Circuit Court of Appeals disagreed, stating:

> Even though retirement benefits of former employees already retired are not a mandatory subject of collective bargaining, "it does not

> naturally follow, as the company implies, that a union loses all interest in the fate of its members once they retire." Rosen v. Public Service Electric & Gas Co., 477 F.2d 90, 94 n. 8 (3d Cir. 1973). We therefore hold that the plaintiff-union had standing to represent the retirees in seeking arbitration under its labor contract with Canron.

580 F.2d at 81.

Finally, even if the collective bargaining agreement is terminated, a union still has standing to prosecute claims which arose when the collective bargaining agreement was still in effect. In Local 368, AFL-CIO v. Western Electric Co., 359 F. Supp. 651, 654 (D.N.J. 1973), the Union sued for breach of the collective bargaining agreement when Western Electric improperly laid off eleven workers. On appeal, the court addressed the issue of the Union's standing. The employees were laid off on October 21, 1970, and

the Complaint was filed on November 12, 1970. The collective bargaining agreement expired December 6, 1971, and the Union was decertified as the exclusive bargaining representative of Western Electric's engineering personnel on August 29, 1972. The court held:

> The subsequent expiration of the Agreement, and decertification, do not affect the Union's standing to prosecute claims that arose when the collective bargaining agreement was in effect. John Wiley & Sons v. Livingston, 376 U.S. 543, 84 S.Ct. 909, 11 L.Ed.2d 898 (1964); United States Gypsum Co. v. United Steelworkers of America, 384 F.2d 38, 46 (5th Cir.), cert. denied, 389 U.S. 1042, 88 S.Ct. 783, 19 L.Ed. 832 (1968).

359 F. Supp. at 654.

Thus, Petitioners' argument that the USWA could not seek to enforce its members' liens against the Estate for breaches of provisions of collective bargaining agreements is without

merit. This position is well-grounded legally. It cannot possibly constitute attorney misconduct to have asserted it.

In their Report of Misconduct, Petitioners alleged B&F violated Rule 1.15 of the Rules of Professional Conduct by rendering their claims to money "under the guise and shell of the 'Union Trust Fund'" without accounting therefor. Res. App., p. A-12. They now contend $1,124,000.00 was paid by the Bankruptcy Trustee to the Union Discretionary Trust Fund as of December 1991[8] and that USWA is receiving that amount as fees or compensation. Because this contention was not raised in the Report of Misconduct, it should not be considered now.

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8 Petitioners do not cite any evidence in the Record for this assertion. They could not because December 1991 is after the rulings by the Bankruptcy Court and District Court.

Moreover, Petitioners' attack upon the procedure for payment of funds by the Bankruptcy Trustee to the Union Employee Discretionary Trust Fund (Petitioners' Brief at 14-15) is nothing more than another collateral attack upon the settlement. So are their arguments that B&F had no powers of attorney for the Pension litigation and that USWA was not the official bargaining agent in the Pension litigation, Petitioners' Brief at 16-17. The Settlement Agreement was approved long ago, as was the Pension Plan termination date. Petitioners were aware of both of those proceedings, participated in AP 88-43 and had personal counsel (Noel & Noel) representing them to make certain the pension payments were correct. R. 225-275, 385. Petitioners should have challenged the Bankruptcy Court's

orders then. It is too late for them to do so now.

Petitioners have attempted, before filing their Report of Misconduct, to attack collaterally the Settlement Agreement on several occasions. For instance, in IP 85-5415, after the Bankruptcy Court entered its Order approving the first distribution under the Settlement Agreement on November 13, 1989, R. 43, Petitioners herein (and others) attempted to appeal from that order of distribution. R. 46. Their appeal was dismissed on July 12, 1990, by Judge Dillin, who found:

> [T]he appellants' objections to the matters decided in Bankruptcy Court do not focus on the logistics of distributing checks in accordance with the Agreement and pertinent schedules. Rather, the appellants express concern with the Settlement Agreement itself, and the issue of whether they

> themselves were represented and treated properly with regard to the formation and confirmation of that Agreement. These are issues which should have been raised at earlier stages in the bankruptcy proceedings; appeals, if any, should have been taken on orders of the Bankruptcy Court regarding the plans themselves.

R. 61.

Thereafter, on August 27, 1990, and August 31, 1990, Petitioners (and others) filed a Rule 60(b) Motion in both IP 85-5415 and AP 88-43 to set aside the October 17, 1989, Order releasing their liens entered in AP 88-43. R. 68, 771. Both of those Rule 60(b) Motions were denied, in part, because they were an attempt to attack collaterally the Settlement Agreement. R. 81, 91. An appeal of the denial of their Rule 60(b) Motion in AP 88-43 was dismissed because it was untimely. R. 803.

Similarly, after the Bankruptcy Court dismissed the employees' claims in AP 86-593 on October 6, 1989, because those claims had been settled in AP 88-43 (R. 487), Petitioners (and others) moved the Court to set aside the Order on June 5, 1990, raising many of the same objections to the settlement they raised in this proceeding. R. 491. Their request was denied, partly because they were seeking to attack collaterally the settlement (R. 505-506), and their appeal therefrom was dismissed because it was not timely filed. R. 557.

Having unsuccessfully attempted to attack the settlement on several occasions, Petitioners again do so in their Report of Misconduct. A report of attorney misconduct cannot serve the office of appeal from the merits of a ruling. The time for appeal from the

orders approving the settlement and establishing the pension termination date has long since expired.

CONCLUSION

The Petition for Writ of Certiorari should be denied, because Petitioners are informants who requested a Bankruptcy Court to discipline attorneys pursuant to its inherent power and do not have standing to appeal the Bankruptcy Court's refusal to discipline those attorneys.

Moreover, the Petition for Writ of Certiorari should be denied because Petitioners, who seek a referral of their allegations filed with the Bankruptcy Court to the Disciplinary Commission, have already filed those allegations of misconduct directly with the Disciplinary Commission which reviewed and dismissed those allegations. Thus the relief

Petitioners requested from the Bankruptcy Court and continued to request in their appeal to the District Court, Court of Appeals and this Court has already been granted to them so that their appeal is moot.

Because Petitioners have now conceded that B&F represented the USWA and the certified subclass and did not represent them individually, the whole premise of the Report of Misconduct is admittedly wrong. The Petition basically seeks to reargue the global settlement agreement approved long ago, and Petitioners have filed their baseless Report of Misconduct to argue the merits of the settlement.

Further, the District Court properly found Judge Vandivier did not abuse his discretion in finding there were no allegations of misconduct that should be referred to the Disciplinary

Commission. Indeed, Petitioners have shown no misconduct on the part of B&F or WMS.

The Petitioners have failed to show any reasons why this Court should review any aspect of the decision of the Court of Appeals. The Petition for Writ of Certiorari should be denied.

Dated: September 28, 1992

Respectfully Submitted,

William P. Wooden*
Katherine L. Shelby

Attorneys for Respondents William P. Wooden, John D. Nell, Wooden McLaughlin & Sterner, Paul T. Deignan, John Wood and Bamberger & Feibleman

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APPENDIX

UNITED STATES BANKRUPTCY
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:	)	
	)	
CONTINENTAL STEEL	)	
CORPORATION f/k/a	)	
PENN-DIXIE STEEL	)	Bankruptcy Case No.
CORPORATION and	)	IP85-5415-V
PENN-DIXIE	)	
INDUSTRIES, INC.,	)	
Debtor.	)	

PLAINTIFFS' VERIFIED REPORT TO THE COURT OF EGREGIOUS ATTORNEY MISCONDUCT BY WILLIAM P. WOODEN, Esq., JOHN D. NELL, Esq., THE LAW FIRM OF WOODEN, McLAUGHLIN & STERNER AND PAULT T. DEIGNAN, Esq., JOHN WOOD, THE LAW FIRM OF BAMBERGER & FEIBLEMAN
AND
MOTION TO APPOINT COUNSEL

Comes now, Lewis Anderson, I.D. Breeden, Phil Kauble and Wade Kauble (the "Claimants"), by counsel, to report egregious attorney misconduct to the proper authority and move that the U.S. Bankruptcy Court shall appoint counsel pursuant to Rule 5(A) of the Rules of Admission and Discipline of

the U.S. District Court for the Southern District of Indiana, on grounds as follows:

1. That the Claimants are former union employees of the Continental Steel Corporation ("Continental Steel") with wage and employment related benefit claims in this bankruptcy.

2. That Paul T. Deignan, Esq., John Wood, Esq., of the law firm of Bamberger & Feibleman (hereinafter "B&F") filed claims in the Continental Steel bankruptcy, entered Appearances on behalf of Claimants in various adversary proceedings, including Adversary Proceedings 86-141, 86-237 and others, and filed Adversary Complaint in Adversary Proceeding 86-593 on November 10, 1986, to enforce Claimants' claims, all of this done without notice to Claimants, without the knowledge of Claimants, without

consent of Claimants, and without legal authority to represent Claimants.

3. That Bamberger & Feibleman negotiated the wage claims of the Claimants and rendered the wage claims of Claimants and similarly situated persons to the sum certainof Three Million, Five Hundred Thousand Dollars ($3,500,000.00), plus interest, and that this Three Million, Five Hundred Thousand Dollars, plus interest, is now unaccounted for.

4. That the Claimants are participants and beneficiaries of the Continental Steel Corporation 1950 Employee Pension Plan "A" and that with the last reports and verified Statements of Net Assets of the Plan Administrator and Trustee of Pension Plan "A", there was approximately Forty-Million Dollars ($40,000,000.00) in assets funding Pension Plan "A"

solely for the benefit of Plan "A" participants and beneficiaries such as Claimants, and that Pension Benefit Guaranty Corporation and others liquidated the assets funding Pension Plan "A" in Adversary Proceeding 86-141 ("AP 86-141") in this bankruptcy proceeding.

5. That Bamberger & Feibleman entered Appearance in AP 86-141 on behalf of the United Steelworkers of America for the sole purpose of litigating the claims of Claimants in AP 86-141, the sole matter litigated in AP 86-141, without knowledge of Claimants and without consent of Claimants and without any authority whatsoever to do so.

6. Bamberger & Feibleman participated in the liquidation of the assets funding Pension Plan "A" in AP 86-141. The reported Forty-Million

Dollars ($40,000,000.00) funding Pension Plan "A" are now unaccounted for and has apparent sums missing. As a result, vested pensions by virtue of more than twenty years (20) employment at Continental Steel by Claimants have been concealed from Claimants.

7. That the Claimants filed a Complaint in state court action against Bamberger & Feibleman alleging an attorney-client relationship between Claimants and Bamberger & Feibleman based on the aforesaid various appearances and pleadings discovered by Claimants wherein Bamberger & Feibleman represented Claimants, and later, the certification of the class in AP 88-43 wherein Bamberger & Feibleman was counsel for a certified class of which Claimants were members. The Claimants were seeking information and accounting of the Claimants' claims rendered to

money by Bamberger & Feibleman in this bankruptcy proceeding. Said state court action was venued to the Clinton County Circuit Court, Case No. 12C01-9005-CP-198 ("the Clinton County Action").

8. That William P. Wooden, Esq., John Nell, Esq., and the law firm of Wooden, McLaughlin & Sterner entered Appearance for Bamberger & Feibleman in the Clinton County Action, and with documentary material in their hand that Bamberger & Feibleman entered Appearances on behalf of Claimants and rendered Claimants' claims to money, answered the Claimants' Complaint in the Clinton County Action with the bald lie, under penalty of perjury, that there was no attorney-client relationship between Claimants and Bamberger & Feibleman, or duties of attorneys of Bamberger & Feibleman to

account to Claimants for the Claimants' claims rendered to money by Bamberger & Feibleman, with full appreciation of the fact that it was a bald lie for two purposes:

1) To perpetuate a fraud on the Clinton County Circuit Court;

2) To perfect the concealment of missing funds apparent in the rendering of claims to money by Bamberger & Feibleman without knowledge or consent of the true claim-holders.

9. That by virtue of the foregoing facts, Wooden, McLaughlin & Sterner are active and direct participants in an organized pattern of racketeering activity by attorneys (1) to render the claims held by members of the general public to money without knowledge of the true claim-holders, (2) to conceal the money rendered

without the knowledge of the true claim-holders, and then, (3) to conceal the claims of "fees" from the true claim-holders, members of the general public, and the courts, for "services rendered" on behalf of Claimants and the bankrupt estate, all done under the color and authority of licenses to practice law in the State of Indiana.

10. That astounded and amazed by the bald lie, verified under penalty of perjury, told to the Clinton County Circuit Court delineated in paragraph 8, the Claimants moved to remove the Clinton County Action to the U.S. Bankruptcy Court in the Continental Steel bankruptcy wherein the Claimants' claims were rendered to money and concealed from Claimants by attorneys without knowledge or notice to Claimants, and before this Bankruptcy Court in assigned Adversary Proceeding 90-242.

11. That the foregoing facts are allegations that are true and warrant discipline of attorneys since attorneys should not be concealing the facts of Claimants' claims rendered to money and the representation of claims of members of the general public without their knowledge, consent and/or authority, and then, concealing the transactions and money so rendred.

12. That Rule 5(A) of the Rules of Admissions and Discipline of the U.S. District Court for the Southern District of Indiana provides:

RULE V. DISCIPLINARY PROCEEDINGS

> A. When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court shall come to the attention of a judge of this court, whether by complaint or otherwise, and the applicable procedure is

> not otherwise mandated by these Rules, the judge shall refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

13. That B&F violated Rule 1.2(a) and Rule 1.4 of the Rules of Professional Conduct by the failure to communicate to Claimants directly that B&F was representing Claimants' claims indirectly or otherwise and rendering these claims to money, and as to the means by which the claims were pursued directly, indirectly or otherwise.

14. That B&F violated Rule 1.2(a) and Rule 1.4 of the Rules of Professional Conduct by entering into settlements of Claimants' claims without consulting Claimants directly.

15. That B&F violated Rule 1.5(b) of the Rules of Professional Conduct by

the failure to communicate how B&F was being paid for the legal services rendered in this bankruptcy proceeding for rendering Claimants' claims to money, and how B&F was paid indirectly, directly or otherwise.

16. That B&F violated Rule 1.7 of the Rules of Professional Conduct in that B&F represented the United Steelworkers of America (the "USWA") in this bankruptcy proceeding and various adversary proceedings in this bankruptcy, that the interests of the USWA were directly adverse to the Claimants' interests in this bankruptcy, that B&F's representation of Claimants and their claims was materially limited by the representation of the USWA, all done without consultation of the Claimants or consent of Claimants.

17. That B&F violated Rule 1.8(f) of the Rules of Professional Conduct in that B&F accepted compensation for representing Claimants from another, to wit, the USWA, without consulting Claimants and without consent of Claimants.

18. That B&F violated, and is now violating, Rule 1.15 of the Rules of Professional Conduct by the rendering of Claimants' claims to money under the guise and shell of the "Union Trust Fund" and the "Union Medical Claims Committee" in the administration of this bankruptcy without accounting for Claimants' property when asked to do so.

19. That B&F violated Rule 1.16(a) of the Rules of Professional Conduct in that B&F continued to represent Claimants and their interests when B&F was discharged and categorically told not to represent Claimants.

20. That B&F violated Rule 3.3, and is violating Rule 3.3, by false statements of material fact and law made to this Bankruptcy Court.

21. That B&F violated Rule 8.4(c) of the Rules of Professional Conduct by their representations to numerous counsel during the years 1986, 1987 and 1988 that they represented Claimants to interfere and deprive Claimants of their rights to independent counsel and, then, denying that any attorney-client relationship existed between the Claimants and B&F as delineated herein.

22. That B&F violated Rule 8.4(c) of the Rules of Professional Conduct by denying any personal knowledge of any adversary proceeding wherein the Claimants' claims and interests were litigated.

23. That B&F and Wooden, McLaughlin & Sterner violated, and are violating, Rule 8.4(c) and Rule 3.3 of the Rules of Professional Conduct by engaging in a consistent pattern of conduct involving dishonesty, fraud, deceit and misrepresentations by the concealment of the transactions delineated herein, and by the active false statements of law and fact to conceal the dishonesty, frauds and deceits that have occurred herein.

WHEREFORE, Claimants move as follows:

1) That the Bankruptcy Court shall refer this matter to the Indiana Disciplinary Commission of the Indiana Supreme Court for appointment of special counsel and full investigation so that findings of the facts may be reported to this Court and that the truth may be ascertained, as this Court

is required to do so pursuant to Rules of the District Court.

2) Such other and further relief as proper in the premises.

Mark Garringer
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(317)925-4110

VERIFICATION

Comes now the undersigned under penalty of perjury to verify under penalties of perjury that we have read the foregoing very carefully and that each statement is true and correct, and that we have in custody voluminous documentary material that conclusively and constructively proves that the foregoing statements are true and correct, and personal knowledge that the foregoing statements are true and

correct along with the names and addresses of others who will testify that the foregoing statements are true and correct, and that we will cooperate with any tribunal, administrative agency or law enforcement agency in the investigation of this and any related matters.

LEWIS R. ANDERSON	I.D. BREEDEN, SR.
PHIL KAUBLE	WADE KAUBLE

CERTIFICATION OF SERVICE

This is to certify under penalty of perjury that a copy of the foregoing Verified Report to the Court, etc., and Motion To Appoint Counsel has been served upon the parties listed on the attached distribution sheets by first

class, U.S. Mail, postage prepaid on the date of filing same.

_____

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:	
	CASE NO. IP85-5415 V
CONTINENTAL STEEL CORPORATION, f/k/a PENN-DIXIE STEEL CORPORATION and PENN-DIXIE INDUSTRIES, INC.,	
DEBTOR.	
UNITED STEELWORKERS OF AMERICA, AFL-CIO, on behalf of Itself and on behalf of Members and Retired Former Members of Local Unions 2, 1054 and 3601,	ADVERSARY PROCEEDING No. 0593
Plaintiff,	
vs.	
N. WAYNE ETTER, as Trustee for Continental Steel Corporation, Debtor, UNION BANK & TRUST COMPANY, as Indenture Trustee Under City of Kokomo Pollution Control Revenue Bonds, Series 1974 and Series 1975,	

AMERICAN FLETCHER)
NATIONAL BANK AND)
TRUST COMPANY, as)
Indenture Trustee)
Under City of)
Kokomo Pollution)
Control Revenue)
Bonds, Series 1972,)
CITY OF KOKOMO,)
INDIANA, TREASUERE)
OF HOWARD COUNTY,)
INDIANA, MORGAN)
CONSTRUCTION)
COMPANY, STAHL)
WELDING, INC.,)
HANSELL COAL &)
SUPPLY CO., INC.,)
GENERAL)
REFRACTORIES)
CORPORATION, A.P.)
GREEN REFRACTORIES)
COMPANY, HARBISON-)
WALKER REFRACTORIES)
a Division of)
Dresser Industries,)
Inc., WICKES)
LUMBER,a Division)
of Wickes)
Companies, Inc.,)
LANIER PRODUCTS,)
INC., IBM)
CORPORATION, and)
U.S. UTILITIES,INC.)
)
Defendants.)

ORDER DISMISSING EMPLOYEES
AND THEIR CLAIMS WITH PREJUDICE

This matter is before the Court on the joint motion of N. Wayne Etter,

Trustee herein, and United Steelworkers of America, all by counsel, seeking the dismissal of all former employees and their claims from this adversary with prejudice as a result of settlement of said claims in other proceedings within this bankruptcy case, which joint motion is in the following words and figures, to-wit:

(H.I.)

And the Court, being duly advised in the premises, and taking note of its own record herein which demonstrates that the claims of former employees have been fully resolved by settlement in Adversary Proceeding No. 88-43 and that the Agreements approved in the Adversary were also approved after notice and opportunity for hearing in the general bankruptcy proceeding herein, finds that said joint motion should be granted. Accordingly, it is

ORDERED that all former employees of Continental Steel Corporation and any and all claims in relation to compensation and related benefits of said former employees are hereby dismissed from this adversary proceeding with prejudice.

DATED, October 6, 1989.

RICHARD W. VANDIVIER, JUDGE
UNITED STATES BANKRUPTCY COURT

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LEWIS R. ANDERSON, I.D. BREEDEN, SR., PHILLIP L. KAUBLE, and WADE E. KAUBLE,	)	
Appellants,	)	
vs.	)	IP 91-362-C
WILLIAM P. WOODEN, JOHN D. NELL, WOODEN McLAUGHLIN & STERNER, PAUL T. DIEGNAN, JOHN WOOD, and BAMBERGER & FEIBLEMAN,	)	
Appellees.	)	
In re:	)	
CONTINENTAL STEEL CORPORATION f.k.a PENN-DIXIE STEEL CORPORATION and PENN-DIXIE INDUSTRIES, INC.,	)	
Debtor.	)	
(Bk. Case No. IP85-5415-V)	)	

JUDGMENT

In accord with this court's entry on September 30th, 1991, in the above named action, JUDGMENT is hereby ENTERED favor of the appellees, and this appeal is dismissed. Each of the parties is to bear its respective costs in this case.

It is so ORDERED this 30th day of September, 1991.

SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

Copy to:

Mark Garringer
2802 North Delaware Street
Indianapolis, Indiana 46205

Katherine L. Shelby
201 North Illinois Street
1600 Capital Center South
Indianapolis, Indiana 46204

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

July 10, 1992

Before

Hon. Joel M. Flaum, Circuit Judge

Hon. Daniel A. Manion, Circuit Judge

Hon. Milton I. Shadur, District Judge*

IN THE MATTER OF; CONTINENTAL STEEL CORPORATION formerly known as Penn Dixie Steel Corporation, formerly known as Penn Dixie Industries, Incorporated,	)	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division
Debtor,	)	91 C 362
No. 91-3387	)	Sara Evans Barker, Judge
APPEAL OF: LEWIS R. ANDERSON, I.D. BREEDEN, Sr., PHIL KAUBLE, et al.	)	

---

* Hon. Milton I. Shadur, District Judge for the Northern District of Illinois, is sitting by designation.

(over)

ORDER

This matter comes before the court for its consideration of the appellees' motion for sanctions pursuant to Rule 38.

Rule 38 sanctions are appropriate if: (1) the appeal is frivolous and (2) sanctions are appropriate. A-Abart Elec. Supply, Inc. v. Emerson Elec. Co., 956 F.2d 1399, 1406 (7th Cir. 1992). We have stated before that an appeal is frivolous when the result is "foreordained by the lack of substance to the appellant[s'] arguments." Mars Steel Corp. v. Continental Bank N.A., 880 F.2d 928, 938 (7th Cir. 1989) (en banc). We also have stated that sanctions are appropriate when an appeal is "prosecuted with no reasonable hope of altering the district court's judgment and for purposes of delay, harassment or sheer

obstinacy." A-Abart Elec. Supply, 956 F.2d at 1407. Furthermore, in considering sanctions, "[t]he standard depends on the work product: neither the lawyer's state of mind nor the preparation behind the appeal matter." Id. at 938.

Applying these standards, we grant the appellees' motion for sanctions pursuant to Rule 38. The district court concluded that the appellants' appeal from the bankruptcy court's decision was both moot and meritless. Nevertheless, on appeal to this court, the appellants made no attempt to address the mootness issue. The appellees argued in the district court as well as in this court that the appellants lacked standing to appeal the bankruptcy court's decision citing Ramos Colon v. United States Attorney, 576 F.2d 1 (1st Cir. 1978); In re

Echeles, 430 F.2d 347 (7th Cir. 1970); Mattice v. Meyer, 353 F.2d 316 (8th Cir. 1965); and In re Teitelbaum, 253 F.2d 1 (7th Cir. 1958). In their brief before this court, however, the appellants failed to cite any controlling authority or distinguish the authority cited by the appellees. When asked to address the standing issue at oral argument, the appellees' [sic] counsel confessed confusion about the issue. In effect, the appellants wholely ignored the jurisdictional issues squarely raised by their appeal. Instead, the appellants' counsel presented a brief citing five cases that supported only general principles of law. With such unresponsive and irrelevant arguments, the appellants could have had no expectation of altering the lower court

judgments. Cf. Williams v. Leach, 938 F.2d 769, 775 (7th Cir. 1991).

In short, Attorney Garringer's performance fell far short of the level of advocacy demanded by this court. Accordingly, damages assessed against appellants' counsel are appropriate under Rule 38. See A-Abart Elec. Supply, 956 F.2d at 1407 (sanctions may be imposed against either an appellant or the appellant's attorney).

THEREFORE, IT IS ORDERED that appellants' counsel shall file a brief within fifteen days of this decision, explaining why he should not pay the appellees' costs for this appeal. See Circuit Rule 38. During the same time period, the appellees should provide this court with a statement of their costs and fees.

UNITED STATES COURT OF APPEALS

SEVENTH CIRCUIT

Thomas F. Strubbe, Clerk
219 South Dearborn Street
Chicago, Illinois 60604
TELEPHONE (312) 435-5850
FTS 387-5350

Date: July 24, 1992

Case No.: 91-3387, InRe: Continental

vs. Apl: Anderson, Lewis

Mark Garringer, Esq.

2802 N. Delaware Street

Indianapolis, IN 46205

Dear Counsel:

Today this office received the enclosed appellant's prtition [sic] for rehearing en banc which is being returned to you unfiled due to the following procedural concern(s):

The petition for rehearing en banc is untimely, FRAP 40(a). Unless otherwise scheduled by order.

Note: Although every attempt is made to keep this checklist current, counsel is advised to consult the Clerk's Office for relevant procedural changes dictated by recent case law.

A COPY OF THIS NOTICE SHOULD ACCOMPANY THE CORRECTED FILING WHEN RESUBMITTED.

COUNSEL IS ALSO ADVISED IT IS THEIR OBLIGATION TO IMMEDIATELY NOTIFY OPPOSING COUNSEL OF THIS FILING REJECTION, AS DUE DATES FOR SUBSEQUENT FILINGS MAY BE AFFECTED.

Sincerely,

THOMAS F. STRUBBE,
CLERK OF THE COURT

By:

_____
Deputy Clerk

(1054-042391)

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

August 7, 1992

By the Court:

IN THE MATTER OF: CONTINENTAL STEEL CORPORATION, formerly known as PENN-DIXIE INDUSTRIES, INCORPORATED, Debtor,	)	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
APPEAL OF: LEWIS R. ANDERSON, I. D. BREEDEN, SR., PHIL KAUBLE, et al.	)	No. 91 C 362 Sarah Evans Barker, Judge.
No. 91-3387	)	

This matter comes before the court for its consideration of the "MOTION TO RECALL THE MANDATE AND MOTION FOR LEAVE TO FILE MOTION INSTANTER" filed herein on 7/31/92, by counsel for the appellants. On consideration thereof,

IT IS ORDERED that said motion is DENIED.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

September 18, 1992

Before

Hon. JOEL M. FLAUM, Circuit Judge

Hon. DANIEL A MANION, Circuit Judge

Hon. MILTON I. SHADUR, District Judge*

IN THE MATTER OF:	]	Appeal from the
	]	United States
CONTINENTAL STEEL	]	District Court
CORPORATION,	]	for the Southern
formerly known as	]	District of
PENN-DIXIE STEEL	]	Indiana,
STEEL CORPORATION,	]	Indianapolis
formerly known as	]	Division.
PENN-DIXIE	]	
INDUSTRIES,	]	No. 91 C 3662
INCORPORATED,	]	Sarah Evans
	]	Barker, Judge.
Debtor,	]	
	]	
APPEAL OF: LEWIS	]	
R. ANDERSON, I.D.	]	
BREEDEN, SR.,	]	
PHIL KAUBLE,	]	
et al.,	]	
	]	
No. 91-3387	]	

ORDER

On July 10, 1992, we ordered attorney Mark Garringer to respond to

our decision to award sanctions under Fed. R. App. P. 38. In that order, we recounted the specific instances where Mr. Garringer's performance fell far short of the level of advocacy demanded by this court.

Mr. Garringer's explanation does not in any way alter our decision to award Rule 38 sanctions. Accordingly, we award sanctions in the amount of $1,000.00 plus costs of the appeal to be taxed against attorney Mark Garringer. Mr. Garringer must pay the sanctions within thirty days of this order.

* Hon. Milton I. Shadur, District Judge for the Northern District of Illinois sitting by designation.